

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
McCOLLUM, individually, and STEPHANIE §
KINGREY, individually and as independent §
administrator of the Estate of LARRY GENE §
McCOLLUM, §
PLAINTIFFS §
§
v. § CIVIL ACTION NO.
§ 4:14-cv-3253
§ JURY DEMAND
BRAD LIVINGSTON, JEFF PRINGLE, §
RICHARD CLARK, KAREN TATE, §
SANDREA SANDERS, ROBERT EASON, the §
UNIVERSITY OF TEXAS MEDICAL §
BRANCH and the TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE. §
DEFENDANTS §

Plaintiffs' Consolidated Summary Judgment Response Appendix

EXHIBIT 278

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN MCCOLLUM, STEPHANIE)
KINGREY, and SANDRA McCOLLUM,)
individually and as heirs at)
law to the Estate of LARRY GENE)
McCOLLUM,)
Plaintiffs,)
vs.) CIVIL ACTION NO.
) 3:12-CV-02037
BRAD LIVINGSTON, JEFF PRINGLE,)
AND THE TEXAS DEPARTMENT OF)
CRIMINAL JUSTICE,)
Defendants.)

ORAL AND VIDEOTAPED RULE 30(B)(6) DEPOSITION OF
THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE (ROBERT EASON)
MARCH 26, 2013

ORAL RULE 30(B)(6) DEPOSITION OF THE TEXAS
DEPARTMENT OF CRIMINAL JUSTICE (ROBERT EASON), produced as
a witness at the instance of the Plaintiffs and duly
sworn, was taken in the above-styled and numbered cause on
the 26th day of March, 2013, from 9:42 a.m. to 12:00 noon
and 1:05 p.m. to 6:39 p.m., before Kathleen Nevils,
Certified Shorthand Reporter in and for the State of
Texas, reported by computerized stenotype machine at the
offices of the Attorney General, 300 West 15th St.,
Austin, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or

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1 attached hereto.

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3

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1 Unit?

2 A. Can you repeat the question?

3 Q. What is your understanding of the reasons that
4 Mr. McCollum, Larry Eugene McCollum, died at the Hutchins
5 Unit?

6 A. Well, my understanding of the issue is is that
7 when Mr. McCollum was incarcerated there at the Hutchins
8 Unit, there were several factors, as I understand it, that
9 took place when he went through intake. And he was housed
10 at the Hutchins Unit, I believe in C-7 dorm. Mr. McCollum
11 basically -- he was housed on a top bunk. Mr. McCollum
12 didn't get up to eat, as I understand it. He didn't stay
13 hydrated as he was instructed to do.

14 And then at some point Mr. McCollum
15 basically became ill. An officer that was assigned to
16 that dormitory, I believe somewhere around two o'clock in
17 the morning, was counting, discovered Mr. McCollum. The
18 officer initiated ICS, which was one of our procedures
19 that we use when we deal with any type of issues in a
20 correctional setting, and additional staff, supervisor
21 responded, assessed the situation, handled that situation
22 the best they could with everything else going on in an
23 institution.

24 And Mr. McCollum was transported by EMS to,
25 I believe, Parkland Hospital, and later he was pronounced

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1 deceased, I believe four or five days later there in the
2 hospital. And we were told at the beginning of this issue
3 from Parkland is that the offender died of natural causes.
4 And later it was determined -- I believe documentation on
5 the autopsy that was issued with hypothermia, but it was
6 ruled an accidental death, so that's my understanding of
7 the situation.

8 Q. Okay. What is -- is that your -- basically your
9 full understanding of the situation, the reasons for
10 Mr. -- Mr. McCollum's death, sir?

11 A. Yes, sir.

12 Q. Okay. What -- where did that understanding come
13 from?

14 A. From the documentation that I reviewed for the
15 -- for my deposition and from discussing the issue with
16 Warden Pringle.

17 Q. Anything else?

18 A. No, sir.

19 Q. Okay. What documents did you review in
20 preparation for -- for this deposition?

21 A. Is it okay if I look at these notes?

22 Q. Absolutely.

23 A. I can give these to you.

24 Q. That would be great.

25 A. I reviewed, of course, the administrative

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1 deceased, I believe four or five days later there in the
2 hospital. And we were told at the beginning of this issue
3 from Parkland is that the offender died of natural causes.
4 And later it was determined -- I believe documentation on
5 the autopsy that was issued with hypothermia, but it was
6 ruled an accidental death, so that's my understanding of
7 the situation.

8 Q. Okay. What is -- is that your -- basically your
9 full understanding of the situation, the reasons for
10 Mr. -- Mr. McCollum's death, sir?

11 A. Yes, sir.

12 Q. Okay. What -- where did that understanding come
13 from?

14 A. From the documentation that I reviewed for the
15 -- for my deposition and from discussing the issue with
16 Warden Pringle.

17 Q. Anything else?

18 A. No, sir.

19 Q. Okay. What documents did you review in
20 preparation for -- for this deposition?

21 A. Is it okay if I look at these notes?

22 Q. Absolutely.

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1 review. I reviewed our policy on temperature extremes in
2 the workplace, AD 10.64. I reviewed the Hutchins Unit
3 profile, of course the lawsuit notification. I reviewed
4 our unit classification procedures concerning health
5 summaries. I reviewed inclement weather policies, KD
6 Memorandum 06.07.

7 Q. Would you tell me what that one was again, sir?

8 A. Dealing with inclement weather, like --

9 Q. Inclement --

10 A. -- when we have bad weather outside, and it
11 talks about not recreating offenders outside, of course
12 not working them outside, things like that, just general
13 procedures.

14 Q. When you say "bad weather outside," would that
15 include really hot weather like that weather would be over
16 a hundred degrees?

17 A. Well, what we do in the institution is when the
18 weather is extremely hot outside, then of course we limit
19 our outside work details. We do everything we can to
20 bring our inmates in from working outside as well as
21 recreating them on the outside rec yard. When it's --
22 when it's hot outside, we bring them in and we don't do
23 that.

24 Q. No, and I appreciate that, but I just want to --
25 when you say "inclement weather," with regard to heat,

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1 you're talking about temperatures greater than 95, greater
2 than a hundred?

3 A. I don't recall -- and I could be wrong, but I
4 don't recall high temperatures being part of that policy
5 because I remember looking at it and I thought this really
6 doesn't relate to what -- what I'm going to be dealing
7 with here, so I didn't spend a lot of time reading it,
8 but...

9 Q. Okay. What else?

10 A. Okay. And our agency e-mail that the director
11 puts out every spring about all the steps that -- that I'm
12 supposed to ensure as regional director get taken on the
13 units to mitigate heat issues on our facilities and the
14 things that I talk to the wardens about every month, just
15 all the steps that we're supposed to take to mitigate the
16 heat.

17 And then risk management -- risk management
18 puts out a training circular or curriculum during the
19 summer months dealing with heat and how to handle the heat
20 in the summertimes, things like that, heat training. I
21 looked at some of that documentation.

22 Q. Now, I want to make sure I have a clear
23 understanding of that. You referred to that as a training
24 circular or curriculum or heat training. Are we talking
25 about like a one-page document that people -- that gets

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1 read to correctional officers at some point?

2 A. No. It's more than one page. It's --

3 Q. How many pages is it?

4 A. I would say three or four pages --

5 Q. Okay.

6 A. -- if I remember correctly.

7 Q. Okay. We're not talking about like -- when I
8 hear the word "curriculum," I think of like courses; I
9 think of extensive documentation and training. We're
10 talking about a short document that can be read to the
11 officers; is that fair?

12 A. Yes. Maybe circular is a better word.

13 Q. No, that's fine. I just want to make sure that
14 we're on the same page.

15 A. Yes.

16 Q. Please continue, sir.

17 A. That's -- that's basically the only documents
18 that I reviewed for --

19 Q. Okay. And then you also mentioned that you had
20 conversations with Warden Pringle. When did you have
21 conversations with Warden Pringle?

22 A. I had conversations with Warden Pringle. Any
23 time that we have an offender death, of course the wardens
24 call me, let me know the circumstances surrounding the --
25 the death and we talk about the issue. We talk about, you

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1 know, lots of things, and they're required to call me. Of
2 course we take every offender death very seriously. And
3 so we talked, I guess early -- early morning hours of the
4 -- that morning where Offender McCollum was transported to
5 the hospital and then later when he was pronounced
6 deceased there at Parkland.

7 Q. Okay. Other than the night of the -- well,
8 the -- in the week or so when he was taken to the
9 hospital, have you had any other conversations with Warden
10 Pringle about Mr. McCollum's situation and death?

11 A. Yes. We talked after it was -- we found out
12 that an admin review should have been done on
13 Mr. McCollum's death. I talked to Warden Pringle about
14 that and -- because we had to go back and gather all the
15 documentation and get the admin -- admin review put
16 together and send it in to our Emergency Action Center,
17 who is the official, I guess, recordkeeper for all of our
18 admin reviews for the agency.

19 Q. Now, when you say "an admin review should have
20 been done," was one not done?

21 A. We did one. It was later, but when we have an
22 offender death that is ruled a death from natural causes,
23 an admin review is not required by our policy.

24 Q. Okay.

25 A. And --

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1 Q. And, again, who told you that the death was
2 natural causes?

3 A. It was one of the doctors there at Parkland was
4 the information that we were given.

5 Q. And that was told to Warden Pringle or somebody
6 and --

7 A. Yes.

8 Q. -- then Warden Pringle relayed that information
9 to you?

10 A. Yes, sir. I can't recall the doctor's name, but
11 --

12 Q. Is your understanding that a heart attack is a
13 death by natural causes?

14 A. Yes, sir, my understanding. I'm not, of course,
15 a medical professional, but that's my understanding.

16 Q. And that's important, and we're getting a little
17 bit ahead of ourselves, but I want to make -- you're here
18 to talk as the Texas Department of Criminal Justice. Do
19 you understand that?

20 A. Yes, sir.

21 Q. Okay. And you're here to talk about various
22 categories of information, and within these categories I'm
23 going to be doing my best to ask you particular questions.
24 Do you understand that?

25 A. Yes, sir.

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1 Q. Okay.

2 MR. EDWARDS: Did I -- did we get that
3 exhibit marked?

4 THE REPORTER: Yes. Did I not give it to
5 you?

6 MR. EDWARDS: Oh, you did.

7 Q. (By MR. EDWARDS) And, sir, are these the -- the
8 categories of information that you've prepared for at
9 least to talk about today in the deposition? And feel
10 free to show that to your counsel, Mr. Garcia.

11 MR. GARCIA: Is that the amended?

12 MR. EDWARDS: Yes.

13 THE WITNESS: Yes, sir, I believe I'm
14 prepared to talk about these. No. 10 is -- I'm at
15 somewhat a disadvantage on No. 10, but I will do my best.

16 Q. (By MR. EDWARDS) Okay. Well, and -- and I don't
17 -- I appreciate that. That sounds very magnanimous of
18 you, but what I -- if you're not -- if you're not
19 comfortable being the representative or feeling that you
20 have as much knowledge as anybody else as to No. 10, I'd
21 rather have you just tell me and we'll get the right
22 person here. If at any point when we're discussing those
23 topics you say, "You know what? I'm the wrong guy," just
24 please let me know, okay? Our goal is accuracy above all,
25 and I appreciate you looking through that so thoroughly.

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1 A. Sure.

2 Q. Okay. Is hyperthermia a death by natural
3 causes, to your understanding?

4 A. I couldn't comment on that. I'm not a medical
5 professional.

6 Q. Okay. Let me ask it again.

7 A. Nobody has, you know --

8 Q. The reason I'm asking this particular question
9 is because I thought -- and, again, please tell me if I --
10 if I've misunderstood you. I thought you said when there
11 are deaths by natural causes, TDCJ's policy does not
12 require an Emergency Action Center report or an
13 administrative review. Did I understand your testimony
14 correctly?

15 A. Yes, sir, you did.

16 Q. Okay. Therefore, TDCJ is the one making that
17 determination, not University of Texas Medical Branch or
18 some doctor that you guys consult; is that correct?

19 A. That's true.

20 Q. Okay. So what I want to know is: Hypothermia,
21 which is -- or excuse me, hyperthermia, heat stroke or
22 death by heat, is that something that the department,
23 Texas Department of Criminal Justice, considers a death by
24 natural causes?

25 A. That question, I'm not the one to answer that

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1 question. However, when we have an offender death and if
2 it's even questionable whether it could have been heat
3 related or it could have been from other causes, it's my
4 understanding that Mr. McCollum -- of course, there were
5 other causes as far as his death.

6 When I looked at that autopsy report about
7 his obesity and -- and things like that, that that was
8 some information in there that could have been a cause of
9 his death as well. And we do an admin review for anything
10 that might be deemed heat related or that could be deemed
11 heat related at some point --

12 Q. Well --

13 A. -- and require an admin review, so that's why we
14 had to go back and put the admin review together for this
15 -- for this incident.

16 Q. Right. At the time of Mr. McCollum's death, was
17 it TDCJ policy to do an admin review for any death that
18 could be heat related?

19 A. I'm trying to remember. At that point, I don't
20 think it was. I don't think it was. And, again, I might
21 -- I might be way off base there, but I don't -- I don't
22 think it was at that point.

23 Q. Okay. I just -- okay. It sounds to me -- okay?
24 And I don't want to testify. I want to listen, okay? But
25 it sounds to me like -- well, was this kind of a one --

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1 Warden Pringle.

2 Q. Prior to the autopsy that came back that said
3 his death was due to hyperthermia, were you aware that
4 Mr. McCollum was found unresponsive some time around two
5 o'clock in the morning?

6 A. I don't know the exact timeline. I think it was
7 a little after two o'clock.

8 Q. 2:10, does that --

9 A. Yes.

10 Q. -- sound better?

11 A. Warden Pringle and I talked about that.

12 Q. Okay. Were you aware -- do you know when he was
13 transported to the hospital?

14 A. Without looking at the timeline, the official
15 timeline, I couldn't tell you.

16 Q. Okay. Okay. If he arrived --

17 A. I haven't -- I haven't reviewed any EMS records
18 or anything like that as far as their timeline, anything
19 like that.

20 Q. Why not?

21 A. I haven't -- I don't have those records.

22 Q. Aren't those records --

23 A. From EMS.

24 Q. -- important in terms of you, as the Texas
25 Department of Criminal Justice, evaluating whether or not

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1 your officers performed their jobs appropriately?

2 A. My officers performed their jobs appropriately,
3 and --

4 MR. EDWARDS: Let me object as --

5 THE WITNESS: -- I reviewed -- I'm sorry.

6 MR. EDWARDS: Let me object as
7 nonresponsive.

8 Q. (By MR. EDWARDS) Let -- and I think there was
9 just confusion on the question, sir. Isn't requesting or
10 evaluating EMS records something that would be important
11 to you in terms of evaluating whether your officers did
12 their jobs appropriately the night of Mr. McCollum's
13 seizure and ultimate death?

14 A. What I looked at is our unit-based timeline, and
15 to my knowledge, we've never requested any EMS records as
16 part of our admin review.

17 Q. Okay. Well, you --

18 A. We get --

19 Q. -- mentioned EMS --

20 A. We get --

21 Q. -- records. That's why I asked you about them.

22 A. I understand. We get a -- we get a timeline
23 based on what occurs on our facility, and we try to put
24 that timeline with -- with the report and the admin
25 review.

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1 Q. You reviewed that timeline in preparation for
2 your deposition today, right?

3 A. Yes, sir.

4 Q. Okay. Was there anything that jumped out at you
5 as a potential problem when you looked at that timeline?

6 A. No, sir.

7 Q. You didn't find it troubling that a man was
8 nonresponsive and seizing and didn't get emergency
9 personnel to him in upwards of an hour?

10 A. Sir, I'm going to tell you this, is when this
11 incident happened and Warden Pringle and I talked about
12 it, and we looked at the timeline. You know, every --
13 every offender death concerns me, okay? As regional
14 director, every offender death concerns me, and we try to
15 look at those deaths, you know, the best we can. And
16 Warden Pringle and I talked about the timeline.

17 And given what all was going on at the unit
18 at that time of the morning -- I believe they had another
19 emergency situation where an offender -- responded to an
20 offender death, being short-staffed, that I believe that
21 the -- the lieutenant and the sergeant, when they were
22 called about that emergency, about that situation, they
23 handled it the very best that they could handle it.

24 They assessed -- they called ICS. They
25 assessed the situation. The lieutenant responded. She

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1 assessed the situation. She got on DMS, Digital
2 Monitoring System, talked to one of the nurses at the
3 Crain facility. And of course Mr. McCollum was a newly
4 received offender, didn't have any restrictions noted in
5 the computer. The nurse advised her to call 911, and
6 that's what the lieutenant did, and we got that ambulance
7 there as quickly as possible. And --

8 Q. Do you --

9 A. -- if I may --

10 Q. Sure.

11 A. Okay.

12 Q. No, no. You -- I didn't mean to interrupt you.

13 A. No --

14 Q. If you may. Please continue. I don't want to

15 --

16 A. There's -- I mean that timeline, it's not
17 unusual for it to take sometimes 45 minutes maybe to an
18 hour to get an ambulance on a facility depending on where
19 the facility's at, depending on what's going on on a
20 facility. There's -- a lot of times on large facilities,
21 when I was a warden, if you have an offender, that's in a
22 cell, that needs medical care for whatever reason, by the
23 time the officer gets to the cell, assesses that
24 situation -- all right? -- initiates ICS, says, you know,
25 "I'm in command of this incident. This is the

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1 personnel -- this is what I need. This is what I've got."

2 Those folks respond. They assess the situation.

3 If it's a facility that has 24-hour medical
4 care, whatever the case may be, by the time that
5 assessment is made and if it's determined that an
6 ambulance is needed, we call the ambulance. By the time
7 the ambulance gets out there, gets through our back-gate
8 procedures, gets on a facility, gets down to the offender,
9 wherever the offender is at, whether they're in the
10 infirmary or they're down in a dormitory on a cell block.

11 And it's been my experience that most of
12 the time EMS is going to, you know, perform medical
13 procedures, work on that offender. I know that's not a
14 good word, but for a period of time there on the facility,
15 before they actually leave the facility with the offender.
16 So it's -- those timelines -- that's -- that's not
17 uncommon. Sometimes that happens, and...

18 Q. Okay.

19 A. That's the best way I know how to explain it,
20 sir.

21 Q. Okay. I mean do you think it's okay for TDCJ
22 officers to not notify a hospital or an emergency room for
23 a half hour after determining that someone is in need of
24 emergency care?

25 A. I'll tell you this, sir: I wasn't there the

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1 night --

2 Q. I understand that. My question, sir, is: Do
3 you think, as the corporate representative of Texas
4 Department of Criminal Justice, that it is okay to not
5 call 911 or get an ambulance -- the process started for a
6 half hour after it has been determined that an inmate is
7 in need of emergency medical care?

8 A. I tell you this: They -- again, I wasn't there.
9 I can't testify to what they were dealing with, what they
10 were assessing at the time. My understanding of the
11 situation is is that Mr. McCollum, when he was discovered,
12 was having a seizure. And of course I wasn't here during
13 the depositions of the sergeant and the lieutenant, but my
14 understanding is they said he was having a seizure. He
15 had an open airway; he was breathing; he had a pulse.

16 And seizures are very common in an
17 institutional setting. They occur all the time. When
18 I -- I started as a CO, came up through the ranks. Every
19 facility I've worked on have a lot of offenders that have
20 seizures, and at some point they'll come out of that
21 seizure and we take them to medical. Sometimes they stay
22 in the medical department, they're observed for a while
23 and they don't leave the facility by 911.

24 And at the Hutchins Unit, they deal with
25 seizures quite often, and that's -- that's -- that's

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1 common, but I can't sit here and tell you what was
2 actually going through their mind. They assessed that
3 situation the best that they could. They got on DMS; they
4 contacted medical personnel; they contacted 911 and got
5 the offender to the hospital.

6 MR. EDWARDS: Let me object as
7 nonresponsive.

8 Could you go back to my question?

9 Q. (By MR. EDWARDS) Sir, I don't -- again, I want to
10 -- I need an actual answer to my question, all right? And
11 I'm not asking you to get inside anybody's head.

12 A. Okay.

13 Q. Okay? But it appears that you're willing to do
14 that because you're saying they did the best they could,
15 right? That's getting inside their head; is that correct?

16 A. I disagree with that.

17 Q. Okay.

18 MR. EDWARDS: Would you please repeat the
19 question then?

20 Q. (By MR. EDWARDS) And, sir, I really just need an
21 answer as the representative of the Texas Department of
22 Criminal Justice.

23 (The record was read as follows:

24 "My question, sir, is: Do you think, as
25 the corporate representative of Texas

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1 question, again, ma'am?

2 (The record was read as follows:

3 "My question, sir, is: Do you think, as
4 the corporate representative of Texas
5 Department of Criminal Justice, that it is
6 okay to not call 911 or get an ambulance --
7 the process started for a half hour after
8 it has been determined that an inmate is in
9 need of emergency medical care?").

10 MR. GARCIA: The key to the question --

11 MR. EDWARDS: Bruce, please.

12 Q. (By MR. EDWARDS) Sir, I need an answer to that
13 question.

14 A. If it's determined to be emergency medical care,
15 then, yes, we should call an ambulance right away.

16 Q. Off --

17 A. Okay?

18 Q. -- the charts unacceptable to not do so in that
19 situation that I've provided you --

20 A. Is this --

21 Q. -- is that fair?

22 A. -- determined to be an emergency?

23 Q. Okay.

24 A. That's what I'm saying, is my understanding --

25 Q. Okay.

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1 A. -- from reading officers' statements, talking to
2 the staff, they didn't determine this to be an emergency.
3 They deal with seizures all the time, and the offender was
4 breathing, he had a pulse, and they didn't determine it to
5 be emergency at that point, and that's -- that is the
6 decision that the supervisor made.

7 MR. EDWARDS: Let me object --

8 THE WITNESS: So --

9 MR. EDWARDS: -- again as nonresponsive
10 everything after "yes."

11 Q. (By MR. EDWARDS) Sir, since you seem to want to
12 talk about it, you seem to think that nobody determined
13 that -- that Mr. McCollum was in need of emergency medical
14 care. Is that your understanding?

15 A. At that -- at that first -- at that -- at that
16 onset, that's my understanding.

17 Q. Your understanding is that the first officer who
18 came and found Mr. McCollum seizing and unresponsive
19 didn't believe it was an emergency situation? Is that
20 your testimony?

21 A. I can't testify for those officers.

22 Q. You are.

23 A. No, I'm not. I can't --

24 Q. Okay.

25 A. -- testify for those officers.

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1 Q. Do you -- do you have an understanding as -- you
2 told me those officers did the best they could. You told
3 me that you thought those officers didn't believe there
4 was an emergency happening before their eyes. Is that
5 correct?

6 A. That's -- that's my understanding. That's --

7 Q. Okay.

8 A. That's my belief.

9 Q. Which -- do you not know what they were thinking
10 or do you have an understanding as to what they were
11 thinking? Because it really matters.

12 A. I don't -- I can't get inside their head. I
13 don't know what they were thinking at the time. I'm not
14 -- I wasn't there at the incident, and you asked me
15 earlier, "It's obvious that you want to talk about this
16 certain situation, sir." You're just asking me questions
17 about it, and I'm just trying to talk about it.

18 Q. Okay.

19 A. And that's...

20 Q. Once it is determined that an inmate is in a
21 medical emergency, an ambulance should be called right
22 away; is that correct?

23 A. If it's determined to be a medical emergency.

24 Q. Okay.

25 A. If the on-duty lieutenant or the sergeant --

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1 okay? When they assess that offender, if at that point
2 that, you know, they think it's an emergency, then there's
3 an option there to call 911. That's a -- that's a call
4 that the lieutenant and sergeant make. And, again, I
5 wasn't there. I can't talk about all the decisions they
6 made or why or anything else.

7 Q. Okay.

8 A. I'm just...

9 Q. You're just?

10 A. Trying to answer your questions, sir.

11 Q. Okay. Well, in your -- in your answer, you
12 mentioned that -- does it have to be a sergeant or a
13 lieutenant that calls 911 based on Texas Department of
14 Criminal Justice policy or can a lower-level correctional
15 officer?

16 A. There's no -- this is my understanding, okay? I
17 don't think there is a per se policy that's -- that's out
18 there, from UTMB or the agency, about only certain people
19 can call 911. Our process is is when we have any type of
20 situation on a unit, whether it's a medical issue from an
21 offender, a staff member, a disturbance, any -- any type
22 of issue on the unit, we use the ICS protocol.

23 Part of that protocol is the officer gets
24 on the radio to explain the situation they're having.

25 They're saying, "I'm the on C commander." The first thing

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1 they do is call for the resources that they need, which is
2 the supervisor, things like that. That supervisor will
3 respond as quickly as possible, depending on what's going
4 on in the institution at the time. And then they will
5 take over what we call a lateral transfer of command and
6 verbal transfer of command, and they'll take over that
7 situation, assess the situation and we go from there.

8 Q. As you testify here testify, do you know if the
9 first officer who encountered Mr. McCollum and the state
10 he was in believed that Mr. McCollum was in the midst of a
11 medical emergency? Do you know?

12 A. No, sir, I don't know that.

13 Q. Do you know, as you testify here today, whether
14 or not the sergeant who came after Officer Clark, that
15 first officer, contacted her believed that Mr. McCollum
16 was in a state of medical emergency?

17 A. No, sir. I wasn't there. I don't know that.

18 Q. Do you know whether or not Lieutenant Sanders,
19 who ultimately was -- who ultimately arrived and looked at
20 Officer McCollum, believed that Mr. McCollum was in a
21 state of medical emergency?

22 A. No, sir. No.

23 Q. You don't?

24 A. Like I say, I wasn't --

25 Q. Okay.

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1 A. I wasn't there and I wasn't dealing with what
2 they were dealing with, no, sir. I can't really comment
3 on that.

4 Q. Are you the person that would ultimately
5 evaluate whether or not a supervisory official at the
6 Hutchins Unit acted appropriately?

7 A. I'm in that chain, yes, sir.

8 Q. Are you, like, the highest person in the chain
9 or are you -- where are you in the chain?

10 A. Well, I'm Warden Pringle's supervisor, immediate
11 supervisor, and I have 11 wardens that work for me in the
12 region, and so I would be part of that process.

13 Q. Is there someone above you that would be in the
14 process?

15 A. The disciplinary process or what -- I guess
16 repeat --

17 Q. Yeah.

18 A. Can you repeat the question?

19 Q. I don't care about the disciplinary process
20 right now. We'll get into that. I'm trying to figure out
21 who is in charge at the Texas Department of Criminal
22 Justice for evaluating whether or not officers do their
23 jobs appropriately with regards to inmates in the throes
24 of medical emergencies.

25 A. First of all, the main person in that process

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1 would be Warden Pringle. He's the warden of the facility,
2 and then if there's an issue, then of course -- and, like
3 I said earlier, he calls me on all offender deaths and --

4 Q. Okay.

5 A. -- we talk through those.

6 Q. He's the main person and then he would call you
7 and talk through those, right?

8 A. Yes, sir.

9 Q. What if -- again, this is a hypothetical. What
10 if Warden Pringle doesn't think anybody is doing wrong,
11 but objectively they are doing something wrong? How would
12 that be determined, if at all?

13 A. It would be determined through, I guess --
14 repeat the question. I'm not sure what you're asking.

15 Q. What if Warden Pringle or one of the 11 wardens
16 is -- believes that his officers are doing everything
17 fine, but they're not? I mean would you be the person
18 that would say, "Hey, you got to change this" or would it
19 be somebody else? How would -- how would that situation
20 get fixed?

21 A. It would be me. If --

22 Q. Okay.

23 A. If there was a situation -- any type of
24 situation on a facility and we talk about it. Warden
25 says, "Well, I think everything looked okay," and if I

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1 at Robertson from September of '05 until September of '09.

2 I was promoted to regional director in
3 Region IV in Beeville. Was regional director -- so I was
4 regional director down there for approximately a year.
5 The regional director in Region II retired and I called
6 and asked my director if I could transfer to Region II to
7 live a little closer to home. He said "Absolutely."

8 I transferred to Region II as the regional
9 director and I've been the Region II director since end of
10 September of 2010.

11 Q. How long have you been in the position of
12 regional director, though, sir?

13 A. Let's see. Would be four years in September,
14 so...

15 Q. Okay. Tell me or tell the jury basically what
16 the -- what the responsibilities and duties of a regional
17 director are.

18 A. Okay. Basically I'm responsible for managing a
19 regional budget of \$30 million. I have 11 wardens and 13
20 facilities I'm responsible for. I have approximately
21 almost 900 non-security employees in the region and I have
22 somewhere around 5400 correctional officers. That's COs
23 and ranking officers that work in my region. I'm
24 responsible for conducting employee mediations. I'm
25 responsible for the general operations of the regional

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1 office. I'm responsible for visiting the facilities as
2 much as -- much as I can. I'm responsible for
3 coordinating all our security audits in the region, and
4 there are some facilities that require a security audit
5 every year, and there are some facilities that require
6 security audits every two years.

7 Q. Tell the jury -- and I don't mean to interrupt
8 you, but tell the jury, when you say "security audit," I
9 know you know what that means, and I may even sort of know
10 what it means, but if you could tell the jury what you're
11 talking about so they get a fuller understanding of your
12 job.

13 A. It's a -- it's a very comprehensive in-depth
14 audit in every part of our facility, whether perimeter
15 security, back-gate procedures, cell block procedures,
16 count procedures or security procedures in our food
17 service departments, laundry departments. There's a check
18 list that we use to make sure that we're following our
19 security policies and procedures, all the security
20 memorandums and that the officers are following their post
21 orders.

22 Q. And is that generally to make -- to make
23 everybody feel safer, that, look, everybody is doing the
24 job to make sure that people aren't escaping from prisons?

25 A. Absolutely. It's to make sure that we're

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1 earlier as far as the e-mail that the agency puts out
2 every year about all the steps that we should be taking on
3 the units to mitigate heat issues.

4 Q. Okay. So from the time you started serving as a
5 regional director -- was it '09?

6 A. Yes, sir.

7 Q. Okay.

8 A. September or October of '09.

9 Q. Sure. Until the present time, the issue of
10 heat-related illness has been something that has been
11 known to the agency?

12 A. Yes. We've been -- we've been taking those
13 steps since I've been a regional director, doing
14 everything we can to -- to mitigate the heat --

15 Q. Okay.

16 A. -- and that's -- if I may, there's --

17 Q. Sure.

18 A. As a warden and regional director, it's very
19 important that we take those steps to mitigate heat, and
20 we're doing everything possible to mitigate those heat
21 issues out there on our facilities, and -- because a big
22 piece of what we deal with, especially in the summer, is
23 to try to mitigate those heat issues, to try to keep the
24 inmates as comfortable as possible, keep the staff as
25 comfortable as possible, you know, so we don't have any

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1 major issues out there on our facilities. We want
2 everything to run as smoothly as possible. That's a big
3 part of our mission statement --

4 Q. Sure.

5 A. -- public safety, keep the inmates safe.

6 Q. Sure. Well, you --

7 A. We --

8 Q. As the agency, I mean your desire would be to
9 have conditions that aren't responsible for killing
10 people, right?

11 A. We don't have conditions responsible for killing
12 people.

13 Q. Okay.

14 A. And that's what all these heat steps are about.

15 Q. Okay. It would be important to -- well, all
16 right. You don't have conditions that are responsible for
17 killing people? Is that what you just told me?

18 A. Yes.

19 Q. Okay. And that's at the Hutchins Unit, all the
20 units, there are no conditions that you consider to be
21 contributory to the cause of any deaths?

22 A. No.

23 Q. Okay. Nonetheless, you're -- everybody at TDCJ
24 in the higher-up -- and I mean your level and higher, to
25 your knowledge, are certainly aware that in the summer,

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1 it's extremely hot in Texas; is that fair?

2 A. It gets hot in Texas in the summer. That's --
3 that's why we conduct our heat training; that's why we
4 take all the steps to reduce the -- to mitigate the heat
5 issues --

6 Q. Sure.

7 A. -- and we take that very seriously.

8 Q. Okay. Is it fair, sir, that you take the need
9 to mitigate heat issues seriously because to not do so
10 would be to place inmates' lives in danger? Is that fair?

11 A. We take issues to mitigate the heat because
12 that's our agency directive, and part of our -- part of
13 our -- a big part of our mission is -- is to keep inmates
14 safe, try to keep them as healthy as possible, provide a
15 humane, clean living environment for offenders and staff,
16 and that's -- that's why we do what --

17 Q. Sure.

18 A. -- we do to mitigate the heat.

19 Q. Sure. The heat presents a danger to inmates and
20 employees during the summer months in Texas, at least at
21 the Hutchins Unit, right?

22 A. I believe the heat poses a danger to -- to
23 anyone, whether you're living out in the free world, if
24 you don't take those steps, but we do everything we can.
25 We take all those steps, and if the offenders and the

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1 staff -- they'll stay hydrated, they'll take the steps
2 that we tell them to take, then they can make it through
3 the summer just fine. Been doing it for years. I've
4 worked as a correctional officer in the summertime. I
5 stayed hydrated. Never had a problem.

6 Q. Do you have diabetes?

7 A. Sir?

8 Q. Do you have diabetes?

9 A. No, sir, I do not.

10 Q. Do you have hypertension?

11 A. I was on blood pressure medicine at one time,
12 and I made the -- the decision to lose a lot of weight,
13 take care of myself, and now I'm off blood pressure
14 medication and haven't felt this good in years.

15 MR. GARCIA: Jeffrey, are you at a good
16 breaking point --

17 MR. EDWARDS: Oh, sure.

18 MR. GARCIA: -- for about five minutes? I
19 just --

20 MR. EDWARDS: Yeah, absolutely, absolutely,
21 absolutely. Thanks.

22 THE VIDEOGRAPHER: Off the record, 10:43.

23 (Recess taken).

24 THE VIDEOGRAPHER: We're back on the record
25 with tape No. 2 at 10:55.

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1 A. I believe I'm right on that.

2 Q. Why do -- what's the point of having formal
3 policies like 10.64? Why not just shoot off an e-mail?

4 A. The policy for 10.64 is just to make sure
5 that -- that we are taking all the steps to mitigate the
6 heat in a working environment, and it's the same thing
7 as -- as an e-mail. An e-mail is -- we consider an e-mail
8 a policy, instructions, and we follow an e-mail from the
9 director just like we'd follow any other policy.

10 Q. Got you. Who does the -- who does the e-mail
11 come from? Is that Director Livingston or Director Thaler
12 or Director Stephens or --

13 A. It comes from Mr. Stephens and Mr. Thaler.

14 Q. So is it your testimony that, yes, we have a
15 formal policy, 10.64, for dealing with heat temperatures
16 in the workplace and we also have a policy for dealing
17 with extreme heat temperatures inside? It just comes in
18 the form of an administrative e-mail once a year?

19 A. Yes, sir.

20 Q. And is it your testimony on behalf of TDCJ that
21 that e-mail instructs wardens that they have a duty to
22 take all steps necessary to mitigates extreme heat inside
23 their facilities?

24 A. Yes, sir, within --

25 Q. And if --

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1 A. I'm sorry.

2 Q. If wardens do not take all steps necessary to
3 mitigate heat inside their facilities, in particular their
4 housing areas, what are the consequences?

5 A. If I may ask a question, can you -- what steps
6 are we talking about that the wardens are not taking?
7 Because to my knowledge, all the wardens in my region and
8 across the state are following that directive and they're
9 doing everything absolutely possible to mitigate the heat.

10 Q. Okay. There seems -- let me -- there seems to
11 be some confusion, and if your lawyer thinks I'm speaking
12 out of turn, I'm sure he'll tell me. But when I am asking
13 you questions, I'm doing my best to just try and figure
14 out what it is is the policy, the practice at TDCJ, okay?
15 Some of my questions will be, well, what if this. It
16 doesn't mean that it's going on. It doesn't mean that I'm
17 asking a specific question about the Hutchins Unit or some
18 other unit. Okay? So if you could -- and, sir, I say
19 this respectfully -- try to do your best to just answer
20 the particular question I'm asking. The depo will go, I
21 think -- I think, more quickly, I think.

22 And so my question is basically: Well, if
23 the wardens aren't taking all the steps necessary to
24 mitigate extreme heat inside the facilities -- okay? --
25 that I suppose are delineated on that administrative

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1 e-mail? What would the consequences be?

2 A. The consequences would be as regional director
3 stepping in and correcting the issue.

4 Q. Okay. Well, then I guess what steps does -- has
5 that administrative e-mail been going out since 2009?

6 A. Yes, sir.

7 Q. Okay. Has it changed at all since 2009?

8 A. Not much. I can't -- I can't sit here and tell
9 you every little change on the e-mail, but it's -- I can't
10 remember any huge changes.

11 Q. Okay. Since 2009, when you stepped into your
12 job as regional director, it's your -- it's your
13 understanding that, look, TDCJ has considered extreme heat
14 temperatures inside its facilities, inside its housing
15 areas to be something that it needs to take steps to
16 mitigate the heat during the summer months; is that fair?

17 A. Yes.

18 Q. Okay. Roughly, since 2009, maybe -- maybe
19 earlier, but you know from 2009 an administrative e-mail
20 has gone out instructing all wardens that they do in fact
21 need to take steps to mitigate the heat inside the housing
22 areas, correct?

23 A. Yes.

24 Q. Okay. That administrative e-mail, has that
25 given specific instructions as to what they need to do in

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1 order to mitigate the heat or is that left to the
2 discretion of the individual wardens?

3 A. Of course, the wardens review the e-mail and
4 they do the best they can to make sure we're carrying out
5 every one of those steps.

6 Q. How do you know they do the best they can?

7 A. Because when I visit my facilities in the
8 summertime, I personally walk housing areas and review
9 those -- look at those heat-related or those steps to
10 mitigate the heat. I personally go look at those housing
11 areas. I personally walk in a housing area and I look to
12 make sure that offenders are wearing their shorts in the
13 dayroom, that their fans are operational. All those
14 different steps, I personally look at those issues.

15 Q. Okay. Let's -- let's go through -- what are the
16 steps? Since the same e-mail has been going out roughly
17 since 2009 and it's gone out every year and you're the
18 person responsible for make sure that happens, what are
19 the steps that are -- that are supposed to be taken to
20 mitigate the heat inside the housing areas?

21 A. Number one -- without looking at the document,
22 but number one, when we have transportation buses coming
23 on our unit, if they're sitting still for a certain period
24 of time, we have fans at the back gate we put on the bus,
25 just to keep the air moving through the bus. We have to

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1 let -- we let offenders wear their commissary shorts and
2 T-shirts in the dayroom.

3 We -- and I talked about this earlier: We
4 curtail offender activities as much as possible during the
5 heat. That's outside recreation; that's offenders working
6 outside, things of that nature. We make sure that all the
7 ventilation systems in the housing areas, work areas, what
8 have you, are operating properly. We make sure that all
9 the fans in those particular areas are operating properly.
10 Of course, we follow that AD 10.64 and take outside
11 temperatures. We provider ice water to the inmate
12 population using Igloo coolers and we deliver them ice as
13 much as possible. We try to make as much ice on each
14 facility as we can.

15 I have a large icehouse at the Beto
16 facility in Tennessee Colony, and I ship ice out to
17 facilities that -- for whatever reason in the summer
18 months, a lot of times our ice machines and our freezer
19 vaults struggle just, you know, because it's -- it's hot
20 you know, or I'll ship ice out to them if they're getting
21 low on ice, so we make sure we're getting that ice out to
22 the staff and the offenders.

23 Q. Do you -- and I'll -- I'll let you continue, but
24 do you know if there was a problem with ice at the
25 Hutchins Unit in 2011?

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1 A. Absolutely, yes, sir.

2 Q. Okay. You acknowledged that you certainly
3 should provide as much as possible; is that fair?

4 A. Yes.

5 Q. Okay. Please continue. And I'll just -- I'll
6 go through the litany that I heard you say: Fans on
7 buses, shirts and shorts in the dayrooms; you curtail
8 outside activities; you do your best to make sure
9 ventilation areas are working properly; if there are fans,
10 you make sure they're operating properly. Pursuant to
11 that policy you mentioned, you take outside temperatures
12 and then you provide as much as ice water as possible.

13 That's what I've got so far.

14 A. Yes, sir.

15 Q. Anything else that you do to mitigate the heat?

16 A. We make sure that the facilities -- the
17 offenders, if they have a fan there, they're allowed to
18 use their -- their personal fan. That's one of the steps.
19 We also conduct wellness checks on offenders who have
20 temperature extremes, have a work restriction that's
21 called no temperative extremes. We -- we do check on
22 those offenders every 30 minutes. There's a -- there's a
23 list of those -- those offenders in the housing area.
24 I'd sure there's -- there's a few I probably just forgot,
25 but that's -- that's the majority of them.

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1 Q. If you didn't take these steps, would you agree
2 with me that you would not be protecting inmates from a
3 serious condition known as heat extremes?

4 A. Possible. Just depends on what the outside
5 temperature was at the time.

6 Q. Sure.

7 A. And we're taking those steps.

8 Q. Okay. And just so that we're crystal clear with
9 the jury, I mean the highest ranking officials at the
10 Texas Department of Criminal Justice know, virtually to a
11 certainty, that during the summer months, it's going to be
12 extremely hot and that there are going to be extremely
13 high temperatures inside and outside the facility,
14 correct?

15 A. I -- what do you call extremely high
16 temperatures inside of our facility?

17 Q. What do you call it?

18 A. Just -- you know, of course we have that policy
19 where we use the heat index, and it gets hot in some of
20 our facilities, but as long as the offenders are taking
21 all those steps to mitigate the heat, they're staying
22 hydrated, our staff are staying hydrated, there's not a
23 problem with the heat in our facilities.

24 Q. Yeah, I know. That's not really what I asked
25 you though. What I'm asking -- look, you mentioned these

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1 various mitigation steps to mitigate extreme heat?

2 A. Yes, sir.

3 Q. My question was, look, you're one of the highest
4 ranking people at the Texas Department of Criminal
5 Justice. I want to just confirm for the jury, so that
6 we're crystal clear, that since 2009, you have known --
7 you and your colleagues, to the best of your knowledge,
8 have known that there are extreme heat temperatures inside
9 and outside the facilities you oversee during the summer
10 months; is that fair?

11 A. We start taking these -- we start making sure
12 these -- all these heat steps are in place before it
13 starts getting hot. We take these heat steps every day
14 regardless of what the temperature is during the summer
15 months, regardless.

16 Q. Is that because you know that during the summer
17 months --

18 A. Because we know that it --

19 Q. -- it's most likely going to be extremely hot?

20 A. That's because -- yes, that's because in the
21 summer, it gets hot, and if we don't take these steps,
22 it's possible that offenders could become ill and it's
23 possible staff could become ill.

24 Q. They could suffer heat stroke, heat exhaustion;
25 they could die if you don't take steps to mitigate the

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1 heat, right?

2 A. It's possible, yes, sir.

3 Q. And that's inside the facility as well as
4 outside the facility, right?

5 A. It's possible, yes, sir, and that's why we take
6 the steps.

7 Q. What -- what steps are you -- what -- strike
8 that. Let's see here. What does the expression "heat
9 stroke imminent" mean to you? And by "you," I mean the
10 Texas Department of Criminal Justice.

11 A. "Heat stroke imminent." That, I believe, is
12 part of the policy that we have as 10.64 temperature
13 extremes in the workplace, and it talks about, I believe,
14 if I'm not mistaken, "heat stroke imminent" when the
15 temperature range gets between -- or gets in a certain
16 range that if you continue to work offenders outside in
17 those temperatures and you're not taking those steps to
18 mitigate the heat, that it's possible that an offender
19 could possibly have a heat stroke or a staff member could
20 have a heat stroke.

21 Q. Okay. Does "imminent" to you mean possible?

22 A. Yes, it does.

23 Q. Okay. Now, you mentioned fans. I want to -- I
24 think I may be helping you out here. I think that in the
25 -- in that e-mail it mentioned that even indigent

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1 offenders who can't afford fans, that TDCJ takes steps
2 to -- to help get them -- to help get those people fans to
3 use during the summer months. Did I read that correctly?

4 A. Yes, sir. That's one I -- I missed, and I
5 apologize.

6 Q. No, no. That's fine. Is that done because TDCJ
7 thinks it's so important for inmates to be able to kind of
8 cool their bodies down themselves?

9 A. Yes. We take the heat very seriously. We think
10 it's very important, and, yes, we try to give inmates a
11 fan that do not have a fan.

12 Q. And it is your testimony you take extreme heat
13 very seriously, right?

14 A. Yes, sir, I do.

15 Q. And that's -- that's not just you, Regional
16 Director Eason. That's the Texas Department of Criminal
17 Justice, right?

18 A. Yes, sir.

19 Q. You mentioned that another thing that happens is
20 conducting wellness checks for people that are on an
21 extreme heat list. Did I write that down correctly?

22 A. Yes, sir.

23 Q. Okay. Now, I want to be --

24 A. Can I --

25 Q. Oh, sure.

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1 to make sure they're doing okay. Is that accurate?

2 MR. GARCIA: I'll object to the
3 mischaracterization that it is treated as a housing -- I
4 don't think he said that.

5 MR. EDWARDS: That's fine.

6 MR. GARCIA: Okay.

7 THE WITNESS: We check on those offenders
8 that come out on that work restriction list. We check on
9 them every 30 minutes.

10 Q. (By MR. EDWARDS) And are there documents that --
11 that -- would the correctional officers have to fill out
12 like, hey, I checked on inmate A and inmate B? Is that
13 something that they have to do as part of their job?

14 A. Yes, sir.

15 Q. I guess -- I guess that would mean to me that if
16 such a policy were in place when Mr. McCollum suffered his
17 incident, then I guess correctional officers should have
18 been checking on him every 30 minutes before the --

19 MR. GARCIA: Objection: Speculation.

20 Q. (By MR. EDWARDS) -- the seizure, right, if that
21 were in place?

22 MR. GARCIA: If what were in place, a heat
23 restriction or this procedure? Because he had no heat
24 restrictions on his HSAT.

25 Q. (By MR. EDWARDS) If the procedure were in place

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1 and if Mr. McCollum were on this work restriction list,
2 then I suppose your testimony would be that officers would
3 have had an obligation to check on him every 30 minutes
4 that he was in a housing area, right?

5 A. If he would have been on the list, but Mr.
6 McCollum was not on the list.

7 Q. Right. Do you know why he wasn't on the list?

8 A. No, sir, I don't know the particulars. I sure
9 didn't do the medical exam.

10 Q. Yeah. Did anybody?

11 A. I can't testify to that.

12 Q. Yeah. It's --

13 A. I don't have that -- I don't have that
14 knowledge.

15 Q. Seems like one of the really important things
16 about having one of these lists would be identifying
17 inmates to put on the list. Would you agree with that?

18 A. That's something that the medical department has
19 to do.

20 Q. Well, in conjunction with you, right? And by
21 "you," I mean the Texas Department of Criminal Justice.

22 A. I'll answer that to the best of my ability. If
23 -- if I'm on a particular facility or if an inmate writes
24 me or he files a grievance and a grievance coordinator
25 gets with me and says, "Hey, I'm having problems with the

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1 heat," then I'm going to make sure that we try to get that
2 inmate down to the medical department and let the medical
3 department evaluate that particular offender, and then
4 it's the doctor's responsibility -- if the doctor thinks
5 that they need this heat restriction -- takes a doctor to
6 put a heat restriction on.

7 Q. That --

8 A. That's --

9 Q. You know what? I appreciate that. What you're
10 telling me is, look, you don't expect your correctional
11 officers, your sergeants, your supervisors, to be doctors,
12 right?

13 A. No, I do not.

14 Q. You don't expect them to be physicians'
15 assistants. You don't even expect them to be nurses,
16 right?

17 A. No, I do not.

18 Q. Okay. And that's because they don't have the
19 type of training that really lets them diagnose particular
20 medical conditions, right?

21 A. Yes, that's right.

22 Q. Okay. I assume you rely on UTMB or Texas Tech
23 or whoever is managing the healthcare at the particular
24 prison to make those decisions, right?

25 A. Yes, sir.

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1 Q. Now, to your knowledge, did UTMB, any of the
2 medical staff at the Hutchins Unit or any of those 11
3 units you oversee know that you were treating work
4 restrictions as housing restrictions as well? I mean I
5 expect they would have, but I want to -- I want to be
6 sure.

7 A. That work restriction is not a housing
8 restriction. We just utilize that documentation to
9 identify offenders that might have a heat issue, and we
10 just check on them, just check on their wellness. It's
11 not a housing --

12 Q. Yeah, I don't --

13 A. -- restriction by our policies. It's not a
14 housing restriction.

15 Q. Okay. I don't want -- I don't want to get
16 caught up in the word -- the word "restriction." It's an
17 important thing that you do to make sure that people don't
18 die from high temperatures inside because of
19 susceptibility to heat, right?

20 A. It's an important thing that we do, yes, sir.

21 Q. Okay. And certainly you knew that it was an
22 important thing to do at least from 2009 onward, right?

23 A. No. I said I can't remember exactly when we
24 started that process, but, yes, it's very important. If
25 they're on that heat restriction list, it's very important

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1 that we -- we check on them.

2 Q. Okay. And just to be -- it's -- you knew -- and
3 I'm talking to you, Mr. Eason, everybody high up in TDCJ,
4 at least in your expectation, would know that, look, it's
5 important for you to monitor the well-being of inmates who
6 are susceptible to extreme heat as documented by a medical
7 person even when they're inside your facility, not just
8 outside, correct?

9 A. Yes, sir, if they're on that heat -- if they're
10 on that work restriction heat list.

11 Q. For example, if in 2009 an inmate were put on
12 work restriction because they have diabetes, and that
13 endangered them outside, your policies say, look, you've
14 got to take special steps for that person when they're --
15 when they're working, right?

16 A. Yes.

17 Q. Okay. Likewise, you'd utilize that sort of --
18 I'll call it restriction, but that kind of, I don't know,
19 diagnosis, whatever. You guys utilize that inside the
20 jails to conduct wellness checks to make sure those
21 individuals aren't endangered by the inside heat, right?

22 A. Yes.

23 Q. Okay. Now, and you acknowledge that that would
24 be very important for you to do and to fail to do that --
25 I'm not saying you did, but to fail to do that would not

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1 Q. (By MR. EDWARDS) Is that fair?

2 MR. GARCIA: If you heard a question, feel
3 free to answer it.

4 THE WITNESS: I think what you're wanting
5 me to explain is the difference between an officer making
6 a round in a housing area and performing a wellness check?

7 Q. (By MR. EDWARDS) On a particular inmate, yeah.

8 A. On a particular inmate. If I'm making -- if I'm
9 an officer making a round in a housing area, I'm going to
10 walk through the housing area, and part of that housing
11 area is where the offenders are assigned in their bunks.
12 I'm going to walk and look at those offenders, look for
13 any, you know, abnormal behavior, anything going on, make
14 sure to check on what's going on in the dayroom and then
15 go to the next -- to the next dormitory. A wellness
16 check, I'll look at the list and go check on that
17 particular offender.

18 Q. Okay. Is it fair to say that a wellness check
19 is a more -- is a better way to check on somebody who's
20 susceptible to extreme heat than just doing a round?

21 A. Yes.

22 Q. Has there been any discussion at TDCJ about
23 closing this seven-day loophole to make sure that medical
24 intakes are done right away at the facility?

25 A. I have -- I really can't testify to that. I

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1 A. Again, I'm not a medical professional. I'm not
2 there when that nurse triages offenders off the bus.

3 Q. Why not?

4 A. They're the medical professional. I'm the
5 regional director. I can't be on all my facilities at the
6 same time.

7 Q. Let me hand you Exhibit 38, sir. Is that what
8 you understand that quote, unquote triage to be or do you
9 know?

10 A. I don't know what document they use when they --
11 when they triage the offenders coming off the bus. I
12 don't know what the medical department uses.

13 Q. How many people have died due to heat-related
14 illnesses, let's say 2011 to 2012?

15 A. I don't have that exact information in front of
16 me. I couldn't testify to --

17 Q. More than 10?

18 A. -- how many offenders have died. Do you have
19 something you can show me that --

20 Q. I'm asking you. Do you know? You're --

21 MR. GARCIA: He's just answered.

22 THE WITNESS: I don't know.

23 MR. GARCIA: It's asked and answered.

24 Q. (By MR. EDWARDS) You --

25 A. I don't know that.

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1 Q. Do you know if it's more than 10?

2 A. No, sir.

3 Q. Would it surprise you that it is more than 10?

4 A. Like I said, I haven't received a document from
5 my leadership or from anyone about confirmed heat-related
6 deaths that you're talking about, so I couldn't talk about
7 that.

8 Q. Does the Texas Department of Criminal Justice
9 know how many deaths from heat-related illnesses there
10 have been since 2010 at the prisons it oversees?

11 A. I'm responsible for the prisons in my region,
12 and I'm --

13 Q. I'm not asking you as Regional Director Eason.

14 I'm asking you as the representative of the Texas
15 Department of Criminal Justice. As you testify here
16 today, do you know how many individuals, inmates inside
17 your prisons, have died due to heat-related illnesses?

18 A. No, I do not know that.

19 Q. Okay. Have you had any conversations with
20 anybody at UTMB about the need to document people who are
21 susceptible to extreme heat from a medical standpoint?
22 Have you had any conversations with anybody at UTMB about
23 that?

24 A. I've had not really one-on-one conversations,
25 but when I have my wardens' meetings, personnel from UTMB

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1 A. Yes, sir.

2 Q. The training that TDCJ provides to everybody,
3 right, that --

4 A. Yes, sir.

5 Q. -- three- or four-page circular?

6 A. Yes, sir.

7 Q. Do you know if obesity is mentioned in that?

8 A. I can't recall.

9 Q. Okay. Has --

10 A. I can't recall.

11 Q. Has anybody ever provided -- does TDCJ provide
12 any sort of training relating to, you know -- well, what
13 does TDCJ consider obesity, if you know?

14 A. I don't know that, sir.

15 Q. Would you agree with me that someone who's five
16 ten and 350 pounds is overweight?

17 A. I'd agree to that.

18 Q. That that's not -- that's obesity. That's not
19 the type of obesity that we're talking about where, hey,
20 somebody's six two, 225. Maybe their doctor says they're
21 obese, but -- to wake you up, but that's -- that's an
22 easily observable problem with weight, right?

23 A. Yes, sir.

24 Q. Okay. Do you have any idea how heavy
25 Mr. McCollum was?

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1 weren't sure how many people had died of heat-related
2 illnesses in the summer of 2011. Do you recall that?

3 A. Yes.

4 Q. Okay. If I represent to you that 11 men died of
5 hyperthermia in the summer of 2011, would that surprise
6 you?

7 A. Can you show me a document that -- can you show
8 me that documentation? Because I haven't seen anything
9 that says that.

10 Q. No. Let me represent to you that 11 people in
11 TDCJ custody did in fact die due to hyperthermia in the
12 summer of 2011.

13 A. I have not been told that information.

14 Q. You've never been told that? Okay.

15 A. No, sir.

16 Q. All right. To me, that borders on an epidemic.
17 Would you agree with me?

18 A. I wouldn't agree to that because I haven't seen
19 the documentation.

20 Q. Okay. Assume that I'm telling you the truth,
21 that 11 people in TDCJ custody actually did die from
22 hyperthermia. Would that -- I mean that -- does -- if
23 that were the case, does that not suggest that the -- the
24 things that TDCJ is doing to mitigate the dangers from
25 extreme heat aren't working?

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1 A. Again, sir, I don't have that documentation in
2 front of me to sit here and give truthful testimony about
3 if we have a problem or not because I haven't been told we
4 had 11 heat-related deaths.

5 Q. I understand that. Nobody ever told you that 11
6 people died in the summer of 2011 from hyperthermia,
7 right?

8 A. No, sir.

9 Q. Okay. Assume that that's the case. If -- if
10 that's the case, does that suggest to you a pretty serious
11 problem at TDCJ?

12 MR. GARCIA: Objection: Speculation.

13 THE WITNESS: No, it does not.

14 Q. (By MR. EDWARDS) Okay. Why not?

15 A. Because we are doing everything possible to
16 mitigate the heat in our institutions.

17 Q. Are you air-conditioning your institutions?

18 A. No, sir.

19 Q. Okay. So then you're not doing everything
20 possible to mitigate the heat, correct?

21 MR. GARCIA: Objection: Argumentative.

22 THE WITNESS: Yes, we are.

23 Q. (By MR. EDWARDS) Okay. Is it possible to
24 air-condition the facilities that you oversee?

25 A. It's possible, but it's not needed.

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1 Q. Well, it's your opinion that it's not needed,
2 right?

3 A. It's my experience that it's not needed.

4 Q. Okay. If 11 people died in the summer of 2011
5 due to hyperthermia, would you change your opinion?

6 A. I don't know that 11 people died.

7 Q. If they did?

8 A. Well, if -- I don't know if they did or not.
9 You're sitting here giving me these -- these numbers, 11
10 people. I haven't seen anything that shows me that 11
11 people died of hyperthermia, so how can I accurately try
12 to answer that question?

13 Q. Well, what if a thousand people died from
14 hyperthermia?

15 MR. GARCIA: Objection: Speculation.

16 Q. (By MR. EDWARDS) Would that cause you pause?

17 A. It would cause me concern.

18 Q. Okay. Well, what if -- what if 10 or more
19 people died from hyperthermia in the summer of 2011?

20 MR. GARCIA: Objection: Speculation.

21 Q. (By MR. EDWARDS) Would that cause you pause?

22 A. That would cause me concern if that happened. I
23 don't have any documentation in front of me to say that,
24 but there's not a need to air-condition our prisons.
25 We're taking all the steps to mitigate heat.

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1 Q. Okay.

2 A. There's no Constitutional requirement for us to
3 air-condition our prison.

4 MR. EDWARDS: Let me object as
5 nonresponsive.

6 Q. (By MR. EDWARDS) Whether or not there's a need to
7 air-condition the prisons that TDCJ administers, it's your
8 opinion that there's not, right?

9 A. Yes, sir.

10 Q. Okay. What would change your opinion, if
11 anything?

12 A. At this point, my opinion stands. Just what I
13 told you: There's not a need to air-condition our
14 institutions.

15 Q. Okay. Would a certain number of deaths due to
16 extreme heat be something that would cause you to change
17 your opinion?

18 A. Again, we're assuming that something might
19 happen. I mean you haven't showed me any documentation to
20 show that we've had 11 deaths, and, no, my stance is we do
21 not need to air-condition our institutions.

22 Q. What if -- what if I was able to show you
23 documents indicating that 11 people died in the summer of
24 2011 due to hyperthermia? Would your opinion change?

25 A. No, it would not.

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1 Q. Why not?

2 A. Because we are taking all the steps that we --
3 we can take to mitigate the heat. We're doing that every
4 summer, and when you look how vast our operation is
5 throughout the state, and how many offenders that we move
6 through our institutions every summer, how many employees
7 we have working in our institutions every summer, we have
8 very little problems with heat-related illness when you
9 look at the numbers.

10 Q. Was that true in the summer of 2011, that you
11 had very little problems with heat-related illnesses?

12 A. In my opinion, yes. When you look at the
13 numbers, I think we do a wonderful job at taking those
14 steps, taking it very seriously and mitigating the heat on
15 our facilities.

16 Q. Just to be crystal clear, it's your testimony,
17 as the Texas Department of Criminal Justice
18 representative, that you do a wonderful job mitigating the
19 heat at your facilities?

20 A. Yes.

21 Q. Do you believe you did a wonderful job at the
22 Hutchins Unit with regard to Larry Eugene McCollum?

23 A. Yes, we do -- we did a -- a good job.

24 Q. Did you make any changes -- I mean the Texas
25 Department of Criminal Justice -- based on Mr. McCollum's

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1 death and the circumstances that surrounded it?

2 A. Not that I'm aware of. We still implement
3 our -- our mitigation -- or all the steps that we take to
4 reduce heat issues on our facilities. We've been doing
5 that, conducting our heat training, and we continue to
6 stay focused on that during the summer months as we always
7 have.

8 Q. Where do you office out of again, sir?

9 A. Palestine, Texas.

10 Q. Okay. Is there like a -- is it just your -- is
11 there like an administrative office that you and maybe
12 your secretary are in, other people?

13 A. Yes, yes. We have a regional office there in
14 Palestine. It's on one of the facilities.

15 Q. Is it air-conditioned?

16 A. Yes, it is.

17 Q. Okay. Is Warden Pringle's office
18 air-conditioned?

19 A. Yes.

20 Q. Is every warden's office that you oversee
21 air-conditioned?

22 A. Yes.

23 Q. It's possible to provide air-conditioning if you
24 want to, right?

25 MR. GARCIA: Objection: Vague.

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1 here. Are you just the wrong person with no knowledge of
2 whether or not TDCJ can air-condition its prisons?

3 A. As far as how much it's going to cost and what
4 it would take, as far as physical plan issues and
5 construction issues and things like that, yes.

6 Q. Okay. Have you ever investigated how much it
7 would cost to air-condition any of the facilities --

8 A. No, I have --

9 Q. -- that you oversee?

10 A. No, sir.

11 Q. Have you ever asked anybody at the Attorney
12 General's -- well, strike that. Have you ever asked
13 anybody to investigate how much it would cost?

14 A. No, sir.

15 Q. Have you ever -- to your knowledge, has anybody
16 at the Texas Department of Criminal Justice ever asked
17 those questions?

18 A. To my knowledge, the facilities division looked
19 at what it would take.

20 Q. When?

21 A. I'm not sure when, but...

22 Q. Then how can you say to your knowledge the
23 facilities division -- I'm not trying --

24 A. Well, at some time -- some times this --

25 Q. -- to be argumentative. I'm just trying to

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1 figure out who I need to ask these questions to and why
2 nobody has asked these questions.

3 A. Some time I think last fiscal year, this fiscal
4 year.

5 Q. Okay. So you believe -- and correct -- I don't
6 want to mischaracterize. You believe, but you're not
7 certain that the facilities division analyzed the cost of
8 air-conditioning, or some aspect of the cost of
9 air-conditioning this past fiscal year?

10 A. Yeah. To what level, I don't know. I don't
11 have that information. I don't work in the facilities
12 division.

13 Q. Well -- okay. The facilities division wouldn't
14 do that on their own, would they, if you know?

15 A. I don't know that, sir.

16 Q. Well, who would -- who would -- who would begin
17 the process for asking the facilities division to prepare
18 a report or analyze the cost?

19 A. I want assume -- well, again, I'm assuming -- I
20 don't know the -- I don't know the answer to that
21 question.

22 Q. Okay. Well, you're here to testify on behalf of
23 the Texas --

24 A. Uh-huh.

25 Q. -- Department of Criminal Justice.

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1 A. Yes, sir.

2 Q. And then you, right?

3 A. Yes, sir.

4 Q. Okay.

5 A. For my particular region.

6 Q. How many regions are there?

7 A. There are six.

8 Q. Okay. So Mr. Thaler, Mr. Stephens, six heads of
9 which you are one?

10 A. Of -- yes, six heads of the region. Now,
11 there's two other -- there's two other deputies as well.

12 Q. Two other deputies in Mr. Stephens' job?

13 A. Same capacity as Mr. Stephens.

14 Q. Who are those other deputies?

15 A. Michael Upshaw and Thomas Prasifka.

16 Q. Okay. Prasifka?

17 A. Prasifka.

18 Q. Okay. Any discussion about air-conditioning
19 facilities at any of these CID meetings?

20 A. No, sir, not -- no.

21 Q. There hasn't been a single --

22 A. I can't recall of --

23 Q. -- discussion, that you can recall, relating to
24 whether or not facilities should be air-conditioned at any
25 of these CID meetings?

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1 A. We discuss all the steps to mitigate the heat
2 making sure those processes are in place, but I don't
3 recall any specific discussions about air-conditioning
4 facilities, no.

Q. Did nobody say, "Hey, why aren't we air-conditioning these facilities?"

7 MR. GARCIA: Objection: Argumentative.

8 Q. (By MR. EDWARDS) You can answer it, sir.

9 A. I just -- I just told you, sir.

Q. No is the answer?

11 A. Haven't had that --

12 Q. Okay.

13 A. -- di

14 Q. All right. We

15 any -- if the CID was at all responsible for -- strike
16 that. How do you know that the facilities division looked
17 at the cost of air-conditioning?

18 A. There was a -- I thought I got that information
19 from my regional manager, Kim Farguson.

20 Q. Okay. Tell me where -- is it Kim Ferguson?

21 A. Farguson.

22 Q. Farguson. Excuse me. Tell me where in the kind
23 of the -- the hierarchical -- I want to say food chain. I
24 don't mean that disrespectfully, but where in the chain of
25 command Ms. Farguson would be?

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1 conversation. He said, "Give me that information." I
2 said okay.

3 Q. Do you think it would be a waste of money to
4 air-condition the housing areas?

5 A. It's not needed, so yes.

6 Q. Okay. Is that -- that kind of your opinion that
7 air-conditioning is not needed, is that shared, to your
8 knowledge, with those people you mentioned above you in
9 the -- the chain of command: Mr. Thaler, Mr. Stephens,
10 Mr. Upshaw and Mr. Prasifka?

11 A. I can't speak for shared knowledge or what they
12 think or anything else, sir, or what's going through their
13 mind. I can't --

14 Q. Okay. Has -- have you ever talked about
15 air-conditioning with -- with Mr. Livingston?

16 A. No, sir, I have not.

17 Q. Okay. So none of these individuals,
18 Mr. Livingston, Mr. Thaler, Mr. Stephens, Mr. Upshaw or
19 Mr. Prasifka, have told you that air-conditioning is not
20 needed in the facilities that TDCJ oversees?

21 A. I haven't discussed it with them. The
22 conversation hasn't come up.

23 Q. Okay. Do you know what the budget is for TDCJ
24 in any given year?

25 A. The entire budget for --

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1 A. Yes.

2 Q. You're making a choice to air-condition your
3 office, and that costs money, right?

4 A. Yes.

5 Q. Okay. So you're making choices here as to what
6 you want to spend money on, right?

7 A. Yes.

8 Q. Okay. So if you stopped air-conditioning the
9 wardens' offices, you'd have money to spend on some of
10 these heat mitigation factors if you wanted to, right?

11 A. We're not going to stop air-conditioning the
12 wardens' offices. That's an administrative area. You
13 have computers and things in there that have to be kept
14 cool. And again, I'm not a maintenance expert, but, you
15 know, there's -- like I said before, we are doing
16 everything we can to mitigate the heat. There's not a
17 need to air-condition our facilities, and we use all the
18 money that the Legislature gives us in a very wise manner.

19 Q. In your opinion, right?

20 A. Yes, sir.

21 Q. Okay. Of all the things you told me that --
22 that you do to mitigate the heat, do any of them cost TDCJ
23 money?

24 A. Yes.

25 Q. What ones?

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1 Q. What about just putting ice water in a cooler?

2 Does that cost the agency a lot of money?

3 A. It costs money to buy the coolers.

4 Q. Yes, it does. Does it cost the agency any money
5 to allow inmates to have fans?

6 A. No, sir, not that I can --

7 Q. Cost the --

8 A. Not that I can see as far as -- talk about
9 electrical costs for all the fans. There's a cost there
10 that we have to pay or the taxpayers pay.

11 Q. But nonetheless, you think it's important enough
12 to force the taxpayers to absorb that cost, correct?

13 A. For an offender to have a fan?

14 Q. Yeah.

15 A. Yes, sir, we make sure that's part of our
16 heat -- our steps to mitigate the heat.

17 Q. Okay. Conducting wellness checks, does that
18 cost you any money?

19 A. It's going to cost money in paper.

20 Q. If it's documented, correct?

21 A. To print -- to print the wellness checks, print
22 the list off the computer and things like that. You know,
23 most of our supply budgets on our units go to paper.

24 Q. Okay. Is it your testimony that TDCJ is doing
25 everything it can financially to mitigate the heat?

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1 A. Yes.

2 Q. Okay. Could TDCJ afford solar shades or solar
3 screens to be placed on windows in the facilities?

4 A. With -- sitting here without talking to our
5 agency budget manager, I couldn't accurately answer that.

6 Q. Okay.

7 A. We're talking different facilities, and I don't
8 know how many windows you're talking about or anything
9 else, so I couldn't accurately answer that question.

10 Q. They're your -- they're your prisons, sir, okay?

11 A. I understand that.

12 Q. It doesn't seem like much to ask to do that. It
13 doesn't seem like it would be expensive, but if I'm wrong,
14 you know, I mean you're the one --

15 A. I don't know --

16 Q. -- who controls the budget. You're the one
17 making the choices.

18 MR. GARCIA: Objection: Argumentative.
19 Counsel, do you have a question or a statement?

20 MR. EDWARDS: Yeah.

21 THE WITNESS: I don't know how much it
22 would cost.

23 MR. GARCIA: Wait, wait.

24 THE WITNESS: I'm sorry.

25 Q. (By MR. EDWARDS) Okay. Do you know how much it

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1 designated, sir, as the person most knowledgeable in the
2 whole agency to talk about this, on behalf of the agency.
3 That's what you've been designated for.

4 A. I understand that.

5 Q. And so I want -- I want to make sure I
6 understand. Okay. The -- earlier you talked about the
7 heat restriction, the work restriction.

8 A. Yes, sir.

9 Q. Okay. Is that one of the policies?

10 A. Well, there's a list that when the inmate goes
11 to medical, sees a medical professional, a provider, and
12 the doctor evaluates the offender, and the doctor or the
13 P.A. makes that determination that offender needs to have
14 that work restriction of no temperature extremes, then
15 that's entered into the electronic medical records. And
16 then that information is -- goes into our system's
17 database, and that information goes to the count room. We
18 make sure that information is accurate and correct, and
19 that work -- that heat/work restriction list is generated
20 off -- off of that.

21 Q. Okay. Other than that, is there any other
22 policy, practice or procedure relating to the creation of
23 lists of prisoners with medical conditions affected by
24 heat, high temperature or high heat indexes?

25 A. That's the only one to my knowledge.

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1 Q. Okay. And I thought you told me you weren't
2 sure -- well, that policy has been in place since 2009? I
3 don't want to --

4 A. I didn't say that.

5 Q. Fair enough. When has that policy or practice
6 been in place at TDCJ?

7 A. I don't believe I said when that came into
8 place.

9 Q. Okay. And I -- I think you're accurate, sir,
10 and I don't mean -- I certainly -- I want to understand
11 this. Do you know when that practice or policy was put
12 into place at TDCJ?

13 A. I don't know for sure.

14 Q. Okay. Do you know if -- well, I think I'm
15 afraid to know this. Do you know if it was in place at
16 the time Larry Eugene McCollum entered the Hutchins
17 facility?

18 A. That's in 2 -- in 2011.

19 Q. That's in July -- I believe July 15th, 2011.

20 A. Yes, sir, to my knowledge, it was in place.

21 Q. Okay. By the same token, it certainly should
22 have been in place, right?

23 A. Yes.

24 Q. Okay. Now --

25 A. He wouldn't have been on the list.

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1 THE WITNESS: Can I stand up a minute? Is
2 it okay?

3 MR. EDWARDS: Any time you want, yes, sir,
4 you can. Would you like to take a break? Now is as good
5 a time --

6 MR. GARCIA: Are you at a good spot?

7 MR. EDWARDS: Yeah, sure.

8 THE VIDEOGRAPHER: Off the record at 2:26.

9 (Recess taken).

10 (Exhibit No. 39 marked).

11 THE VIDEOGRAPHER: We're on the record with
12 tape No. 4 at 2:34.

13 Q. (By MR. EDWARDS) Okay. Let me hand you what's
14 been marked Exhibit 39, sir. Is that the infamous heat
15 precaution e-mail that you've been talking about earlier?

16 MR. GARCIA: Objection: Characterization.

17 Q. (By MR. EDWARDS) All right. Is that the heat
18 e-mail that you were talking about earlier that we've
19 referred to as an administrative e-mail?

20 A. Yes, sir, it looks like it. It looks like the
21 one that they put out every year.

22 Q. Take -- take a look at it. It's --

23 A. Yes, sir.

24 Q. It appears -- it appears to be signed or at
25 least type signed by William Stephens, the Deputy Director

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1 Q. Okay. I'm not aware of any documents that --
2 that they're given. I don't believe we've been provided
3 any documents. Do you believe that those are -- those are
4 out there somewhere?

5 A. Again, I don't -- I'm not involved right in
6 there with that intake process, so I can't tell you
7 exactly what kind of information they're given or what
8 kind of document it's put out on, things like that.

9 Q. Well, line 1 on this Heat Precaution 2011 memo,
10 this e-mail that we've been talking about, is: "Ensure
11 employees and offenders are aware of the signs and
12 treatment for heat related illnesses by conducting
13 training," right?

14 A. Yes, sir. We're doing that.

15 Q. Well, you may be doing that, I suppose. I'm not
16 aware of any --

17 MR. GARCIA: Objection: Argumentative.

18 Q. (By MR. EDWARDS) I'm not aware of any documents
19 to suggest that you are at least with regards to
20 offenders. Now, you're telling me about stuff, and I'm
21 trying to figure out are there documents that you've seen
22 which show that you provided training to offenders --

23 A. I get a --

24 Q. -- about -- excuse me -- about --

25 A. I'm sorry.

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1 Q. No, it's okay -- about the signs and treatment
2 for heat-related illness?

3 A. I get a document from my regional risk manager
4 every summer that tells me that all employees and all the
5 offenders in the region on the facilities have been
6 trained.

7 Q. Okay. Well, how extensive --

8 A. And that information is relayed from the risk
9 management or risk manager on the unit to my regional risk
10 manager.

11 Q. Okay. And you think that that was in effect in
12 the summer of 2011?

13 A. Yes.

14 Q. Okay. I assume, if you're going to have all
15 this training, it better happen, right?

16 A. Yes.

17 Q. Okay. So I assume you'd be critical -- well, if
18 the inmates didn't -- do you know how extensive the
19 training is that's -- that's allegedly given to inmates
20 about the signs and treatment of heat-related illnesses?

21 A. No, I can't speak about how extensive it is, no,
22 sir. Sorry.

23 Q. All right. That would be a question for the
24 intake coordinator or the risk management coordinator at
25 the Hutchins Unit?

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1 A. Yes, sir.

2 Q. Okay. In any event, it absolutely should happen
3 and there should be training about signs and treatment for
4 every inmate, right?

5 A. Yes, sir.

6 Q. Okay. In this training circular, I just want to
7 make sure that TDCJ agrees with this -- "As summer months
8 approach, the occurrence of heat-related illnesses rise.
9 Recognition and prompt treatment of these symptoms are
10 imperative." Does the Texas Department of Criminal
11 Justice agree with that, stand by that statement?

12 A. Where you are reading that at, sir, page 1?

13 Q. Page 1, the third column --

14 A. Okay.

15 Q. -- from the top.

16 A. Okay. I've seen that. Okay. Yes, sir. It's
17 in our training.

18 Q. To me, that means -- prompt treatment means like
19 as soon as you recognize signs or symptoms of heat-related
20 illness, you got to take steps immediately to deal with
21 that. Is that fair?

22 A. Yes, sir.

23 Q. Okay. Now, it also says, "During prolonged heat
24 waves, the risk of heat-related illnesses, injuries and
25 deaths climbs dramatically," right? The second column,

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1 sir, second paragraph, second column.

2 A. Yes, it says that.

3 Q. Do you agree with it?

4 A. I don't agree with the deaths.

5 Q. Why not?

6 A. Because with our track record, and as long as
7 we're doing all these steps to mitigate the heat, then
8 when you look at our numbers, we don't have a problem with
9 heat-related deaths.

10 Q. So your risk management team says that the risk
11 of death climbs dramatically during heat waves. You don't
12 think so because you're taking steps to mitigate it,
13 right?

14 A. Yes, we're taking all the steps necessary to
15 mitigate it.

16 Q. And if you're wrong about the fact of -- well,
17 strike that. If there happened to be, let's say, more
18 than five deaths related to hyperthermia, I don't know,
19 during the summer of 2011, that would be consistent with
20 the training that the risk management provides, right?

21 MR. GARCIA: Objection: Speculation.

22 THE WITNESS: I don't know if there's --
23 like I said, I don't have a document saying -- you keep
24 talking about these --

25 Q. (By MR. EDWARDS) I know.

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1 A. -- five deaths, sir. Without researching the
2 information, looking at that information, looking at the
3 circumstances surrounding if these deaths even took place,
4 were they in the offender housing areas, were they
5 outside, what were their health problems? What were all
6 the circumstances. That's something that we'd have to
7 look at to see if -- if there was an issue there that we
8 --

9 Q. You'd look at it, right?

10 A. Yes.

11 Q. You would analyze it, you'd determine if there
12 was an issue there, and you'd take steps to remedy the
13 problem; is that what you're telling me?

14 A. Yes, and we're taking those steps. We've been
15 -- I've been talking about that. We've been -- we're
16 taking those steps and...

17 Q. And according to you, that's why people don't
18 die from hyperthermia in Texas Department of Criminal
19 Justice facilities, right?

20 A. Yeah, because we're engaged in these steps and
21 we're doing everything possible using all the resources we
22 can to mitigate the heat. That's why we're successful
23 with this policy.

24 Q. Okay. Is Mr. McCollum just an outlier then to
25 you?

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1 Q. Okay. Would you read the conclusions from the
2 Dallas County Institute of Forensic Sciences who conducted
3 the autopsy, sir? Just read that paragraph under
4 "Conclusions."

5 A. What page are you on, sir?

6 Q. Emergency Action Center document page 41.

7 A. Oh, I'm sorry. "Based on the autopsy and the
8 history available to me, it is my opinion that Larry Gene
9 McCollum, a 58-year-old white male, died as a result of
10 hyperthermia, was in a hot environment without
11 air-conditioning. He may have further predisposed to
12 developing hyperthermia due to morbid obesity and
13 treatment with a diuretic for hypertension. Manner of
14 death: Accident."

15 Q. Okay. Can we agree that Mr. McCollum died of a
16 heat-related illness?

17 A. Again, I'm not a medical professional, but based
18 on that document --

19 Q. I'm not --

20 A. -- this is what that's telling me.

21 Q. Okay. I'm not a medical professional either.
22 I'm just -- just a lawyer looking at documents asking you
23 questions, okay?

24 A. Yes, sir.

25 Q. Will you agree with me that at least one person

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1 during the summer of 2011 died from hyperthermia?

2 A. Yes, sir. That's what this document says.

3 Q. That was during the summer months in which your
4 risk management said that heat-related illnesses, injuries
5 and deaths climb dramatically, right?

6 A. Yes.

7 Q. Okay. That's why I get that the risk of death
8 is very real when you've got temperatures this hot inside
9 your housing areas, right?

10 MR. GARCIA: Objection: Speculation.

11 THE WITNESS: I don't know that there's a
12 risk as long as we're taking those steps to mitigate the
13 heat, and, you know, we're talking about a facility at
14 Hutchins that's been open since 1995 and never had a --
15 never had a heat case. All offenders that come through,
16 come through that facility every summer, all different
17 ages, sizes, throughout our entire system, we're talking
18 about, you know, a very unfortunates incident here, but
19 that doesn't necessarily mean that we've got a problem in
20 our system with offenders dying of heat illness because we
21 do not.

22 MR. EDWARDS: Okay. Let me object as
23 nonresponsive.

24 Q. (By MR. EDWARDS) What -- what would it take for
25 you to conclude that there is a problem within your system

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1 of offenders dying from heat-related illnesses?

2 A. I don't think I could make that decision
3 without -- or that -- that call without a medical
4 professional and talking to a medical professional.

5 Q. Have you talked to a medical professional about
6 whether or not there is a problem at the Texas Department
7 of Criminal Justice during the summer months with people
8 dying from heat-related illnesses?

9 A. No, I have not.

10 Q. Why not?

11 A. We talk about these -- these steps during the
12 summer months. In my wardens' meetings, I talk to the
13 wardens. They talk to their staff. UTMB is part of those
14 meetings and --

15 Q. How do you know --

16 A. -- that's the discussions I have.

17 Q. I'm sorry. How do you know they're working,
18 sir, these steps?

19 A. The steps?

20 Q. Yeah.

21 A. Because we got close to 150,000 offenders in our
22 system, and from 1995 -- you're talking about a -- a
23 facility at Hutchins that houses 2276 offenders. Just
24 again, I'm not good at math, but just think about all the
25 offenders that have come through that -- that -- that

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1 unit, and we've had one issue with the heat, one. And if
2 it was a big, huge issue, we'd be having a lot more
3 problems, and --

4 Q. Five, six --

5 A. -- we're not having that.

6 Q. -- seven, eight?

7 A. I don't know that. Where is that information?
8 I would like to see it. And I would have to evaluate it,
9 look -- you know, what were the circumstances surrounding
10 these -- these heat deaths that you're telling me about.

11 Q. Well, it's just -- it's surprising to me that
12 you don't have this knowledge already without me having to
13 tell it to you since --

14 MR. GARCIA: Is there a question, Counsel,
15 or are you going to argue?

16 Q. (By MR. EDWARDS) -- since you run the system?

17 MR. GARCIA: Objection: Argumentative.
18 Don't answer that. Do you have a question, Counsel?

19 Q. (By MR. EDWARDS) Do you run the TDCJ system with
20 regards to analyzing heat-related illnesses?

21 A. No, I don't run the entire system, no, sir, I do
22 not.

23 Q. Who ultimately has responsibility at TDCJ for
24 analyzing whether or not there are a disproportionate
25 number of heat-related deaths in the system?

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1 A. We consider --

2 Q. -- as indicated on this document.

3 A. We consider heat stroke to be very serious and
4 we take it very seriously, absolutely. And we take all
5 heat issues very seriously for our inmates and staff.
6 That's why we have all these steps in place to mitigate
7 the heat.

8 Q. Okay. Again, do you, the Texas Department of
9 Criminal Justice, consider heat stroke a true medical
10 emergency?

11 A. Yes.

12 Q. Okay. Do you agree that when you encounter --
13 when one of your employees encounters a true medical
14 emergency, that would require immediate steps to be taken
15 to get that person hospitalized?

16 MR. GARCIA: Objection to the extent it
17 calls for speculation.

18 THE WITNESS: If -- and, again, concerning
19 Mr. McCollum's situation, I wasn't there that night.

20 MR. GARCIA: Just answer his question. He
21 wasn't talking about the McCollum situation.

22 THE WITNESS: Could you repeat the
23 question? I'm sorry.

24 MR. EDWARDS: Sure.

25 (The record was read as follows:

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"Do you agree that when you encounter -- when one of your employees encounters a true medical emergency, that would require immediate steps to be taken to get that person hospitalized?").

THE WITNESS: Yes.

Q. (By MR. EDWARDS) And not to -- not to make too simple -- of course that's what it requires, right?

A. Yes, sir.

10 Q. Okay. Because you're not a doctor, you're not
11 capable -- none of your employees are doctors, and they're
12 not capable of providing medical care for medical
13 emergencies, right?

A. Yes, sir, sure.

15 Q. Your employees aren't capable of providing
16 medical care for seizures, are they?

A. No, sir.

18 Q. Okay. Your employees aren't capable of
19 providing medical care for heat stroke, are they?

A. No, sir.

21 Q. And to pretend otherwise would just be
22 ridiculous, right?

23 MR. GARCIA: Objection: Argumentative.
24 Don't answer that.

25 Q. (By MR. EDWARDS) To pretend or to suggest that

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1 your employees could handle a seizure or a heat stroke
2 situation medically would be inaccurate, correct?

3 MR. GARCIA: Objection: Vague; confusing;
4 improper hypothetical. Answer as best you can.

5 THE WITNESS: When an employee -- yes, an
6 employee is not -- they don't have -- when I say
7 "employee," I'm talking about correctional staff or a
8 supervisor. They don't have extensive medical training.
9 They get this training here to try to recognize the signs
10 of certain -- certain issues, and we do the best -- the
11 absolute best we can to assess that situation and get on
12 medical treatment.

13 Q. (By MR. EDWARDS) And as soon as that situation is
14 assessed to be, "My gosh, I can't handle this. This is --
15 this is an emergency," you've got to get that guy to a
16 hospital, or that woman to a hospital, right?

17 A. Once that supervisor, that employee makes a call
18 that, "Hey, I think this is a true medical emergency,"
19 then, yes, we've got to contact medical and we've got to
20 get them to the hospital.

21 Q. Okay.

22 (Discussion off the record).

23 Q. (By MR. EDWARDS) Now, your training -- your
24 training says that you have to always transfer heat stroke
25 victims to a medical facility. Do you agree with that?

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1 A. Yes. If it's determined they've had a heat
2 stroke, yes, I agree with that.

3 Q. Okay. Are you capable of determining -- strike
4 that. Are any of your employees, without any medical
5 training, capable of determining whether or not someone is
6 definitively suffering a heat stroke?

7 A. No. They're just trained on the -- the signs
8 and symptoms.

9 Q. So if they see signs or symptoms of heat stroke,
10 they have to always get that person transferred to a
11 medical facility, right?

12 A. For the heat stroke?

13 Q. If the person has signs or symptoms of heat
14 stroke, a medical emergency, according to the Texas
15 Department of Criminal Justice risk management's training
16 circular, and a correctional officer observes signs and
17 symptoms of that type of injury, they have to, have to get
18 them to a hospital, right?

19 A. Right. We assess the situation. I covered that
20 earlier.

21 Q. You've got that -- what was Mr. McCollum's body
22 temperature when he was taken to the hospital, according
23 to the autopsy? It's on, again, page EAC 41.

24 A. Okay. 109.4.

25 Q. Now, again, I know you're not a medical doctor.

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1 lot of different things going on and you've got to secure
2 housing areas that you're dealing with; you've got other
3 offenders that you're dealing with. You can't just throw
4 all the doors open and let inmates come and go as they
5 please. There's -- there's protocols in place to get down
6 to that offender to keep the area secure. There are, you
7 know, other offenders that are in the area. Trying to
8 secure the area that the offender is in. There's just a
9 lot of different issues out there that you have to deal
10 with on any -- any situation, not just a medical
11 situation.

12 Q. I want to just talk about medical situations,
13 okay? And my question, sir, was: Do you acknowledge --
14 I'm asking you as the Texas Department of Criminal
15 Justice -- that there are some situations which -- which
16 are life-threatening, which do not allow for multiple
17 supervisors to be called to assess a situation?

18 MR. GARCIA: Objection: Speculation.

19 THE WITNESS: Again, I wasn't -- I wasn't
20 there the night of the -- of the incident, so I can't
21 really say for sure, you know, about the supervisors, you
22 know, what Mr. McCollum's symptoms were, things like that.

23 Q. (By MR. EDWARDS) Well, is there any set of
24 circumstances that you can see, as the -- as the Texas
25 Department of Criminal Justice, which would lead you to

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1 conclude an ambulance needs to be called right away and
2 multiple supervisors should not be called?

3 A. There could be a situation, depending on the
4 situation and the circumstances, yes.

5 Q. Can you tell me one?

6 A. If we respond to an incident and -- let's say an
7 offender is in a cell and they're not responding; they
8 don't have a pulse; they don't have a heartbeat. We're
9 going to initiate CPR. We're still going to go through
10 that ICS protocol. A supervisor is going to be called
11 down there to assess the situation, and that's our
12 protocol. A supervisor makes that -- makes that
13 assessment.

14 If medical staff is on the unit, of course
15 they're going to respond as well, and if medical staff is
16 on the unit, then those are the folks that's going to
17 initiate that 911 phone call if it's necessary. And if
18 medical staff is not on the unit, when supervisors get
19 there, they're going to make that call to, you know, when
20 to call 911.

21 Q. Okay.

22 A. That's the best I can explain it.

23 Q. Fair enough.

24 A. That's the best I can explain it.

25 Q. That's the policy and practice that's at the

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1 A. It's possible, yes.

2 Q. And as you testify here today on behalf of the
3 Texas Department Of Criminal Justice, you don't see any
4 potential problems with the delay that is almost necessary
5 when you -- when you don't initiate 911 calls until a
6 supervisor is -- is present?

7 A. Like I said earlier, there's no specific
8 protocol, but the -- the timeline for 911 or, you know,
9 who's required to call 911, we have those ICS protocols.
10 We respond quickly to those situations. And, no, I don't
11 have an issue with that.

12 Q. Okay. Just so I'm --

13 A. In my experience.

14 Q. Just so I'm clear, tell me what an ICS protocol
15 is, just so I haven't missed that.

16 A. That's an Incident Command System is what that
17 stands for.

18 Q. What happens with ICS -- when you say "ICS
19 protocols initiated," tell me exactly what you mean.

20 A. If we have an incident, whatever the -- you
21 know, there's all kinds of incidents in a prison setting.
22 If we have an incident in one of the dormitories, the
23 officer is going to either respond to the incident -- if
24 they have a radio, they're going to announce over the
25 radio what the incident is, that they're -- that they're

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1 the on-scene commander, that they need additional staff, a
2 supervisor.

3 If they don't have a radio, they're going
4 to try to relay that information to the officer in the
5 picket. That information could be relayed over the radio
6 by the picket officer or with a telephone, and then when
7 the staff and a supervisor get down there, they respond.
8 Then that supervisor is going to take over to call the
9 transfer of command. They take over the situation and
10 assess the situation and they -- they deal with it from
11 there.

12 Q. And that is -- that's the ICS protocol you're
13 talking about?

14 A. Yes, sir, for the most part, and we go through
15 the -- you know, we go through the steps of, you know,
16 whether it's getting the inmate to medical, you know,
17 whatever we need to do until the incident is completely
18 over, and then we terminate ICS and go back to what we
19 call normal operations in the facility because, you know,
20 you have to understand when you have any type of situation
21 in a prison setting, there's -- there's certain things
22 that you have to do. You have to shut down traffic; you
23 have to move offenders to different cell blocks or
24 different areas. You just can't have inmates running
25 around because everywhere it's a secure environment.

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1 receptacles in the cells. They all have personal fans. I
2 believe that's all, sir.

3 Q. Hutchins, Gurney, and what was the other one?

4 A. Hutchins, Gurney --

5 MR. GARCIA: Cole.

6 THE WITNESS: -- and Cole, yes, sir. I
7 believe I'm accurate on Cole. I might -- could be wrong,
8 but...

9 Q. (By MR. EDWARDS) Okay. And we know at Hutchins,
10 Mr. McCollum died, right?

11 A. Can you repeat that, sir?

12 Q. We know at Hutchins Mr. McCollum died, right?

13 A. Yes, sir.

14 Q. Are you aware of any heat-related deaths at
15 Gurney from 2010 onward?

16 A. Yes.

17 Q. How many heat-related deaths are you aware of at
18 Gurney from 2010 onward?

19 A. One.

20 Q. Whose death are you -- are you aware of as being
21 heat related at the Gurney Unit?

22 A. Rodney Adams.

23 Q. Did you become aware of that because the Texas
24 Department of Criminal Justice received notice that
25 Mr. Adams' family intended to sue the Texas Department of

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1 operations budget. I took a -- a needed step to purchase
2 additional fans with maintenance money in the region, and
3 we do the best we can to mitigate the heat with the money
4 that we're appropriated.

5 Q. We're not asking -- I'm not asking for water to
6 be turned into wine. Let me take that away, but you would
7 tell the jury that one of the important ways in which you
8 mitigate excessive heat is by providing fans, personalized
9 fans to your inmates; is that fair?

10 A. When it's possible, we -- we provide
11 personalized fans, but it's not always possible to provide
12 a --

13 Q. Why --

14 A. -- personalized fan.

15 Q. Oh, okay. Well, why is it not possible?

16 A. Well, there's some institutions that don't have
17 receptacles at the bunks where they can operate a
18 personalized fan.

19 Q. Which are those institutions?

20 A. In my region, sir?

21 Q. Sure. Let's talk about your region.

22 A. I believe it's Hutchins, Gurney, I believe the
23 Cole Unit.

24 Q. How about Hodge?

25 A. Hodge is cell block. They have their

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1 receptacles in the cells. They all have personal fans. I
2 believe that's all, sir.

3 Q. Hutchins, Gurney, and what was the other one?

4 A. Hutchins, Gurney --

5 MR. GARCIA: Cole.

6 THE WITNESS: -- and Cole, yes, sir. I
7 believe I'm accurate on Cole. I might -- could be wrong,
8 but...

9 Q. (By MR. EDWARDS) Okay. And we know at Hutchins,
10 Mr. McCollum died, right?

11 A. Can you repeat that, sir?

12 Q. We know at Hutchins Mr. McCollum died, right?

13 A. Yes, sir.

14 Q. Are you aware of any heat-related deaths at
15 Gurney from 2010 onward?

16 A. Yes.

17 Q. How many heat-related deaths are you aware of at
18 Gurney from 2010 onward?

19 A. One.

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21 heat related at the Gurney Unit?

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1 in the Texas Department of Criminal Justice, right?

2 A. We had another offender that died.

3 Q. Prior to Mr. Adams --

4 A. I don't know -- I can't sit here and testify
5 that if the medical circumstances and all the certain
6 situations surrounding it is similar to what we're talking
7 about today.

8 Q. You haven't gone over it in as great of detail
9 as you have with Mr. McCollum's in preparation for this
10 deposition; is that fair?

11 A. Yes, sir.

12 Q. Okay. As you testify here today, are you aware
13 of other deaths at the Gurney Unit that were heat-related?

14 A. No, sir.

15 Q. If -- if people died -- let's say if two people
16 had died at the Gurney Unit in 2011, the summer of 2011,
17 should you have been made aware of it given your job as
18 regional director?

19 A. I am made aware of it, sir.

20 Q. Well, let me ask --

21 A. I'm made aware of every offender death in my
22 region.

23 Q. Okay. Other than Mr. Adams and Mr. McCollum, as
24 you testify here today, are you aware of any other
25 heat-related illness/deaths at any of the Texas Department

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1 of Criminal Justice facilities you oversee?

2 A. To my knowledge, those are the only two that
3 have been ruled heat-related to my knowledge.

4 Q. All right. What about at other units where you
5 don't have direct oversight responsibility?

6 A. I can't -- I don't have any knowledge of other
7 deaths on other facilities in other regions. That stuff
8 doesn't go through me or -- that information is not shared
9 with me.

10 Q. Well, let me ask you this: Have you made your
11 counterparts aware of the heat-related illnesses and
12 deaths that you -- you do know about?

13 A. I don't do that. Our CID leadership does that.

14 Q. Who's that?

15 A. That is Mr. Thaler or Mr. Stephens.

16 Q. Mr. Thaler's -- not Mr. Livingston; Mr. Thaler;
17 is that fair?

18 A. Mr. Thaler is the one who conducts our CID
19 meetings, yes.

20 Q. At the CID meetings -- and I may be
21 misremembering this, so please correct me if I'm wrong --
22 have any of these heat-related deaths been discussed?

23 A. We discussed -- he mentioned Mr. McCollum's
24 death during the CID meeting.

25 Q. Mr. Stephens did?

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1 A. No. Mr. Thaler did.

2 Q. I'm sorry. Mr. Thaler?

3 A. Yes, sir.

4 Q. Was that before or after this lawsuit was filed?

5 A. If I told you, I wouldn't be accurate. I don't
6 know if it was before or after, but yes.

7 Q. All right. Has Mr. Adams' death been discussed?

8 A. Yes.

9 Q. At the CID meetings?

10 A. At a CID meeting briefly. I can't tell you
11 which one. We have them monthly them, so...

12 Q. But it still remains the conclusion of the Texas
13 Department of Criminal Justice that they're taking all the
14 steps that are necessary to mitigate the heat and that
15 they're doing a wonderful job with relation to protecting
16 inmates from heat-related illnesses?

17 A. Yes, sir.

18 MR. EDWARDS: Why don't we take a short
19 break and change the tape, sir.

20 THE VIDEOGRAPHER: Off the record at 3:52.

21 (Recess taken).

22 THE VIDEOGRAPHER: We're on the record with
23 tape No. 5 at 4:02.

24 Q. (By MR. EDWARDS) Do you know how many, on
25 average, people die every summer in the -- the 11

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1 -- at the point where the -- the supervisor says that or
2 determines that this offender is seizing and they believe
3 it to be a medical emergency, then we're going to either
4 contact medical there on the unit; we're going to try to
5 contact 911 and get them there, depending on all the --

6 Q. (By MR. EDWARDS) Sure.

7 A. -- circumstances going on in the unit at the
8 time.

9 Q. Any time one of your officers in their own mind
10 determines that it's a medical emergency, then 911 needs
11 to be called right away, right?

12 A. Yes, we try to get 911 out as quickly as
13 possible with all other situations going on in the unit,
14 yes.

15 Q. This is a more global question though, okay?

16 A. Okay.

17 Q. Does -- given the proclivity of seizures on
18 units at TDCJ, does TDCJ provide any training about the
19 need to get immediate care for seizures in which the
20 person remains nonresponsive?

21 A. Are we saying -- are we asking if the officers
22 go through certain training or that medical provides the
23 training to the staff or --

24 Q. Do Texas Department of Criminal Justice officers
25 receive any training about the need to treat seizures in

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1 treating that as not a medical emergency would be
2 unacceptable, correct?

3 A. Again, I wasn't there to make that -- to make
4 that medical call during that situation. I'm not a
5 medical professional. I don't know exactly what those
6 officers or the supervisors saw at that particular time,
7 all the issues going on.

8 You know, he was -- appeared to be having a
9 seizure, from the way I understand it, and breathing, had
10 a pulse, so I -- I wasn't there. I can't actually say
11 what they were thinking and the decisions they made. They
12 made -- did the best they could with -- given the
13 circumstances.

14 MR. EDWARDS: Let me object as
15 nonresponsive.

16 Q. (By MR. EDWARDS) I'm not asking about what these
17 officers did with Mr. McCollum. They've told us what they
18 did.

19 A. I understand.

20 Q. I'm asking you, as the Texas Department of
21 Criminal Justice, okay? Does the Texas Department of
22 Criminal Justice consider a person who has just gone
23 through convulsions which are perceived to be seizures,
24 who is not responsive, unable to communicate with the
25 officer to be the type of emergency which requires

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1 immediate intervention and medical care?

2 A. Yes. We train our staff to try to assess that
3 situation, try to make that call to the best of their
4 ability --

5 Q. Okay.

6 A. -- and give them emergency medical care, but --

7 Q. Right. They're not doctors?

8 A. -- there's -- they're not doctors. There's no
9 specific timeline or, you know...

10 Q. Because they're not doctors, they need to err on
11 the side of caution, right?

12 MR. GARCIA: Objection: Speculation.

13 Q. (By MR. EDWARDS) Isn't that what the TDCJ trains
14 its officers to do?

15 A. We -- we do the best we can. We provide all the
16 offenders as much medical care as possible, get them down
17 to medical, and I think we do a good job of that.

18 Q. You wouldn't get somebody down to medical if
19 there's no medical staff on site?

20 A. Right, but we -- yeah, if the officer or the
21 supervisors assess the situation and, you know, they
22 determine that 911 needs to be called, then we do a good
23 job of getting 911, getting them out to the unit as
24 quickly as possible.

25 MR. EDWARDS: Let me object as

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1 nonresponsive.

2 Q. (By MR. EDWARDS) I'm not asking you what they did
3 or what you think they do or whether somebody does the
4 best they can. That's really somebody else's
5 determination, okay? All right? That would be like me
6 saying, "Well, maybe they did the worst they could," but
7 it's opinions as far as I'm concerned. All withdrawn, not
8 a question, okay?

9 I'm trying to figure out what the Texas
10 Department of Criminal Justice actually teaches people,
11 okay? Don't -- to me, a seizure in which the person who
12 has the seizure is incapable of responding is serious. Do
13 you agree with that?

14 A. I'm not a medical professional to be able to
15 respond -- to be able to talk professionally about that.

16 Q. Okay. To me, someone who has convulsions and is
17 seizing and is unable to respond is serious as just --
18 it's not a medical issue as just an issue of someone who's
19 charged with their care-taking. Do you agree with that?

20 A. Yes, I agree that we have to assess that
21 offender and we have to try to get him medical care or get
22 him to a hospital as quick as we can, given the
23 circumstances on the facility.

24 Q. And if you don't get him to a hospital as
25 quickly as you can, that's not paying appropriate

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1 Q. All right. What about seizures in which the
2 person convulses and is nonresponsive and can't
3 communicate with your officers? Does the Texas Department
4 of Criminal Justice consider those situations to be
5 medical emergencies in which we need to get an ambulance
6 in right away?

7 A. Yes, as quickly as possible, we need to get an
8 ambulance --

9 Q. All right.

10 A. -- if there's not medical personnel on the unit.

11 Q. Okay. Transfer facilities versus non-transfer
12 facilities, what's the difference?

13 A. Well, there's -- you know, there's -- there's
14 small transfer facilities to large, but in general, a
15 transfer facility is where we do intake processing, and
16 it's basically inmates can stay there for up to -- up to
17 two years, and there are several transfer facilities, you
18 know, within the state. And -- and then they're sent out
19 to the different prisons throughout the state, but they
20 can stay there for up to two years.

21 Q. Is it fair to say that TDCJ initially knows less
22 about inmates who are coming into transfer facilities than
23 other prisons?

24 A. As far as their criminal history are we talking
25 -- what are we talking --

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1 Q. All right. How does -- how do people get placed
2 on -- with heat-sensitive medical conditions get placed on
3 a list in which they get these welfare checks in the -- in
4 the prison?

5 A. What happens is is when they -- when they come
6 in through the intake process, when they see the
7 healthcare provider, okay? The P.A. or the doctor --

8 Q. Sure.

9 A. -- they evaluate the offender, and if the doctor
10 determines that the offender -- you know, I think there's
11 24 or 26 different restrictions. And if they determine
12 the offender needs a heat restriction as far as in the
13 workplace, then the doctor can write an order. They put
14 the heat restriction on the offender. That is entered in
15 the EMR.

16 And the EMR is now linked with our -- our
17 database, and so it's changed on the HSM 18, for that
18 particular offender, that he has a heat restriction. And
19 then it automatically comes out on the list -- the
20 facility list for offenders that have a work restriction:
21 No working with extreme heat conditions.

22 Q. Okay. Is there any other way to get on a heat
23 list?

24 A. It takes -- it takes to be seen by a doctor and
25 the doctor's order --

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1 Q. Okay.

2 A. -- a P.A.'s order to do that.

3 Q. So the only times when a doctor or a P.A. puts a
4 heat restriction on someone -- someone's work assignment,
5 that will go into the system, and a heat list -- a list
6 will be generated of people with heat-susceptible medical
7 conditions who need to be checked every 30 minutes?

8 A. That's -- that's my understanding, sir.

9 Q. When did that process begin, if you know?

10 A. We've always -- I mean that -- we've had the --
11 the work-related heat restriction for years, sir. This --
12 this process where they have to see the doctor and the
13 doctor makes that determination, that's been around -- I
14 don't know when the HSM 18 program came into play, but
15 ever since I can remember since I've been in the system,
16 that's pretty much been protocol.

17 Q. Okay. Not every inmate works, right?

18 A. No, sir.

19 Q. Okay. Do mentally ill inmates have to work?

20 A. Some of them work, yes, sir.

21 Q. Some don't though?

22 A. Some don't.

23 Q. Okay.

24 A. That's, again, a doctor's determination. If
25 they decide the inmate's mentally ill, then you'll have a

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1 sensitive. I've -- we've been -- I've been taught that my
2 entire career.

3 Q. Okay. Do you know what HIPAA is?

4 A. It's a law, but I don't know all the ins and
5 outs of it. No, I do not.

6 Q. Okay. So I just want to be clear you are not
7 saying, "HIPAA prevents me from doing X, Y and Z." You
8 don't really know what HIPAA prevents. You just -- you
9 just know that you got to treat medical information
10 carefully?

11 A. Yes.

12 Q. Okay.

13 A. We've always been -- been taught to do that.

14 Q. By the highest levels of the agency, right?

15 A. Yes, sir, we've been trained to do that.

16 Q. Okay. By?

17 A. No one in particular, but I just -- when I was
18 coming up through the -- through the system, we've always
19 been told that medical information is sensitive, and
20 they're not going to release medical information to
21 anybody on a facility.

22 Q. Okay. Are you aware of the obligation of the
23 Texas Department of Criminal Justice to accommodate people
24 with disabilities?

25 A. Yes, sir.

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1 Q. Okay. Would you agree that one important factor
2 about accommodating someone with a disability is finding
3 out if they have a disability and communicating that to
4 your staff?

5 A. Yes, sir, if that information is shared with us.

6 Q. Okay. And that's not just physical
7 disabilities. That's also mental disabilities, right?

8 A. As far as sharing that with all -- with all the
9 staff or --

10 Q. No, just -- well --

11 A. -- or are you talking about --

12 Q. -- your obligation --

13 A. -- disability? Can you repeat that?

14 Q. Sure. You have an obligation to accommodate not
15 just physical disabilities, but mental disabilities as
16 well, correct?

17 A. Yes, sir. If there's an inmate that has a
18 mental illness, then it's evaluated by -- we have a psyche
19 department, and they handle that. Then if it's determined
20 they need to be on medication or need to be on a specific
21 psyche facility, then we transport them to a psyche
22 facility where they get that care.

23 Q. Sure. Diabetes is a -- is a disability, right?

24 A. I don't know it to be a disability. Nobody's --
25 no one's ever shared that with me.

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1 Q. Let me -- does the Texas Department of Criminal
2 Justice consider diabetes to be a disability which
3 requires accommodation by its correctional officers and
4 correctional staff? You don't know?

5 A. I don't know that --

6 Q. Okay.

7 A. -- the answer to that question.

8 Q. What about hypertension? Does the Texas
9 Department of Criminal Justice consider hypertension to be
10 a disability that requires accommodation by its
11 correctional staff?

12 A. If a doctor -- if the inmate goes in to see a
13 doctor and the doctor says, "This guy's got hypertension,"
14 then a doctor says he needs a certain restriction, they're
15 going to put that restriction on him. Now, that sensitive
16 information isn't going to be shared with every
17 correctional officer out there on the facility.

18 MR. EDWARDS: That wasn't my question, sir,
19 so let me object as nonresponsive.

20 Q. (By MR. EDWARDS) My question is: Do you
21 consider -- does TDCJ consider hypertension to be a
22 disability which requires accommodation by correctional
23 staff?

24 A. I can't answer that. I don't know if UTMB or
25 Health Services consider that a disability or not as far

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1 as hypertension or diabetes.

2 Q. Well, okay. So no one at TDCJ provides any sort
3 of training as to whether or not hypertension is a
4 disability; is that fair?

5 MR. GARCIA: No. Objection:

6 Mischaracterizes his testimony.

7 Q. (By MR. EDWARDS) I'm asking.

8 A. I've never -- I've never gone through any
9 training.

10 Q. Okay. What about diabetes? Does anybody at
11 TDCJ instruct correctional officers about diabetes being a
12 disability which requires accommodation?

13 A. I've never been -- I've never been told that.

14 Q. So TDCJ doesn't provide training like that; is
15 that fair?

16 A. Training of our correctional staff that diabetes
17 is a disability?

18 Q. Yeah.

19 A. To my knowledge, no.

20 Q. Okay. Tell me exactly what EAC stands for.

21 A. Emergency Action Center.

22 Q. What's its purpose?

23 A. Basically that is -- they just bring in all the
24 information for a variety -- it's a -- for better lack of
25 words, they bring in all the information for all the

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1 Q. Okay. So you obviously can, right?

2 A. We have done -- it depends on -- there's a lot
3 of circumstances here. It depends on the area you're
4 talking about, depends on what time of day that you're
5 talking about.

6 Q. I'm sure it does. You told me that -- I asked
7 you can you rotate prisoners on a heat list to an
8 air-conditioned area during the day. You told me, "We do
9 that," or "We have done that." Did I misunderstand --

10 A. We have done that on -- I know of for sure two
11 facilities.

12 Q. Is the Hutchins Unit one of those facilities?

13 A. Yes.

14 Q. What's the other facility that you have done
15 that on?

16 A. Gurney.

17 Q. Okay. So on Gurney and Hutchins, you have the
18 capability of rotating prisoners into air-conditioned
19 areas if you so choose, fair?

20 A. Depending on the time of day, you know, if --
21 depending on unit operations, what's going on at the unit
22 at the time, you know, what departments are working, if
23 it's -- you know, there's not mass movement going on.
24 There's a lot of factors there that determine, you know,
25 if we can rotate offenders to certain -- certain areas.

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1 sir. When -- when Larry Eugene McCollum was in your -- in
2 your prison --

3 A. Yes, sir.

4 Q. -- at the Hutchins Unit -- okay? -- was there a
5 policy in place relating to moving prisoners into
6 air-conditioned areas, to your knowledge?

7 A. No, there's not a -- there's not an agency
8 policy about that.

9 Q. Was there some sort of practice that was
10 documented at the prison by anybody suggesting that
11 prisoners were moved into air-conditioned areas if --

12 A. There was no -- there was no policy, but if I
13 remember correctly -- and, again, I might be wrong, but if
14 I remember correctly, I think at that time Warden Pringle
15 was letting some of them have access to a multipurpose
16 room at Hutchins facility.

17 Q. Okay.

18 A. And I don't know if it was --

19 Q. This is --

20 A. -- every day or --

21 Q. Well, what's this based on? Have you ever seen
22 a document showing that?

23 A. I'm just trying to answer your question.

24 Q. I understand. And you're doing fine. Is that
25 -- that's based just on a -- is that based on

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1 twice --

2 MR. EDWARDS: Well --

3 MR. GARCIA: -- and he's just told you he's
4 answered the question. So you want to ask him a third
5 time and have me instruct him not to answer it?

6 MR. EDWARDS: Sure.

7 MR. GARCIA: Go ahead. Ask him a third
8 time.

9 MR. EDWARDS: Sure, sure.

10 Q. (By MR. EDWARDS) Are there any other items on
11 this list which don't apply equally to all the facilities
12 you oversee?

13 A. No, sir.

14 Q. Are you sure?

15 A. Best of my knowledge, sir.

16 Q. Okay. So all the facilities you oversee, they'd
17 better be doing this or they're not doing what they're
18 supposed to be doing?

19 A. To the best of their ability, yes, sir.

20 Q. I thought you said on here it says get fans to
21 people, right?

22 A. Personal fans?

23 Q. Yeah.

24 A. Yes, sir.

25 Q. There are no fans at the Hutchins Unit, right?

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1 A. We have fans in the dayrooms.

2 Q. You don't have personal fans at the Hutchins
3 Unit; isn't that -- because that's my understanding. Is
4 that correct?

5 A. That's true. There's not receptacles at the
6 bunks.

7 Q. Okay. So are you critical of Warden Pringle for
8 not having personal fans at the Hutchins Unit?

9 A. No. It doesn't have receptacles at the bunks.

10 Q. Couldn't do it, right?

11 A. What do you mean we couldn't do it?

12 Q. Well, can you -- can you provide fans to people
13 at the Hutchins Unit?

14 A. We have -- what we did is we've gathered all the
15 information in the system about which units don't have
16 receptacles at the bunks, okay? And we sent all that
17 information in to Huntsville, and it was my understanding
18 that they're researching as far as how much it's going to
19 cost to put receptacles at each bunk, how much material
20 we're going to need, how much, you know, the request is
21 going to be for. We've sent all that documentation in to
22 Huntsville.

23 Q. Okay. So you need the fans, you need to come up
24 with a system that lets the fans be at the Hutchins Unit,
25 but it hasn't -- the decision to actually do that

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1 twice --

2 MR. EDWARDS: Well --

3 MR. GARCIA: -- and he's just told you he's
4 answered the question. So you want to ask him a third
5 time and have me instruct him not to answer it?

6 MR. EDWARDS: Sure.

7 MR. GARCIA: Go ahead. Ask him a third
8 time.

9 MR. EDWARDS: Sure, sure.

10 Q. (By MR. EDWARDS) Are there any other items on
11 this list which don't apply equally to all the facilities
12 you oversee?

13 A. No, sir.

14 Q. Are you sure?

15 A. Best of my knowledge, sir.

16 Q. Okay. So all the facilities you oversee, they'd
17 better be doing this or they're not doing what they're
18 supposed to be doing?

19 A. To the best of their ability, yes, sir.

20 Q. I thought you said on here it says get fans to
21 people, right?

22 A. Personal fans?

23 Q. Yeah.

24 A. Yes, sir.

25 Q. There are no fans at the Hutchins Unit, right?

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1 THE WITNESS: I'm confused.

2 MR. EDWARDS: I know you're trying to help
3 me, but on this particular question, you're not, okay?
4 Oh, we're out? Okay. We'll hold that question.

5 MR. GARCIA: And, you know, if you want me
6 to respond on the record, I'll wait until we get the tape.

7 THE VIDEOGRAPHER: Off the record at 5:24.

8 (Recess taken).

9 THE VIDEOGRAPHER: On the record, tape No.
10 6 at 5:34.

11 Q. (By MR. EDWARDS) Okay. Sir, does the Texas
12 Department of Criminal Justice have a policy that requires
13 officers to consult with a nurse when there's no medical
14 staff on a unit prior to calling 911?

15 A. I don't know of a policy.

16 Q. Okay.

17 A. I don't have any knowledge of -- of that.

18 Q. Okay. Does the Texas Department of Criminal
19 Justice have a policy that requires consulting with a
20 lieutenant before calling an ambulance at a particular
21 unit?

22 A. Again, that supervisor piece, as I've talked
23 about before, is part of our ICS piece where we respond to
24 emergencies.

25 Q. Right.

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1 A. Yes, that's correct.

2 Q. In those situations, I believe TDCJ makes
3 available to a unit offsite Telemedicine; is that correct?

4 A. Yes, sir.

5 Q. Okay. Now, in this particular instance, the
6 Crain Unit had a nurse offsite, I don't know, a hundred
7 miles away or so. Is that -- is that your understanding
8 as well?

9 A. Yes. It's from the Crain facility.

10 Q. Okay. Is it TDCJ policy that in all situations
11 in which an inmate is found to be need -- in need of
12 medical intervention that the offsite Telemedicine nurse
13 be contacted first before contacting an ambulance?

14 A. It depends on the situation. If the officer
15 deems it appropriate, then, yes, that's what that --
16 that's what that process is there for, to ask questions or
17 --

18 Q. Fair enough. There's no requirement, though,
19 that in all situations the offsite medical nurse be
20 contacted before an ambulance is called, right?

21 A. Not to my knowledge, no, sir.

22 Q. Okay. Now, if Warden Pringle testified that he
23 did not believe any of the officers who eventually came to
24 -- came to see Larry McCollum the night of the -- or the
25 early morning of July 22nd did anything wrong -- okay? --

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Robert Eason
March 26, 2013

1 is that your -- do you agree with Warden Pringle?

2 A. Yes, sir.

3 Q. Okay. As TDCJ has looked at it, has looked at
4 this incident, you think there was no problem at all with
5 the care that Mr. McCollum received from the correctional
6 officers from the point that they first arrived, I believe
7 at 2:10 in the morning, until EMS arrived?

8 A. Based on all the circumstances that were going
9 around the facility at that time, what they -- you know,
10 what they deal with on any given night, they responded to
11 the incident and, you know, they didn't ignore the
12 incident. They made the best call that they knew to make.
13 They were doing the best that they could. And, yes, I
14 would consider it was appropriate. I know we've
15 discussed, you know, all the procedures and processes it
16 takes to get an ambulance on a facility and possibly how
17 long it might take to get an ambulance on a facility.

18 Yes.

19 MR. EDWARDS: What number are we on, 41?

20 THE REPORTER: I'm not sure, actually.

21 THE WITNESS: Yes, sir.

22 MR. EDWARDS: These two --

23 THE WITNESS: I don't think these were
24 marked.

25 MR. GARCIA: They were marked, but you

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1 put out to our staff.

2 Q. This was a medical emergency, correct?

3 A. Yes, sir.

4 Q. Okay. There was in fact a 54-minute delay in
5 calling for an ambulance, correct?

6 A. Yes, sir, by this timeline, and again --

7 Q. Okay.

8 A. -- I wasn't there, but --

9 Q. By that time -- I understand you weren't there.

10 A. Well, that's here, yes.

11 Q. Okay. As a -- as a -- as the Texas Department
12 of Justice, doesn't it concern -- well, strike that.
13 Delays in getting emergency medical treatment to people
14 can be problematic; would you agree with that?

15 A. Yes.

16 Q. Okay. I mean in emergency situations, time is
17 of the essence, correct?

18 A. Can be, yes, sir, depending on what -- depending
19 on the situation at hand.

20 Q. Okay. Do -- in this particular situation, time
21 certainly mattered, right?

22 A. As the situation unfolded, at some point, yes.

23 Q. Well --

24 A. But, again, I wasn't there at -- at the --

25 Q. I --

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1 take. We do the best we can with --

2 Q. With what?

3 A. With the tools that he have, the tools that
4 we're provided, the resources that we're provided.

5 Q. Okay. Well, let me ask, if you weren't -- if an
6 institution wasn't continually refilling the water jugs,
7 would they still be doing the best they can to make sure
8 water is available to the inmates?

9 A. Which institution are we talking about that's
10 not refilling water jugs?

11 Q. Any institution. I mean I assume you'd have a
12 problem with it if they weren't continually refilling
13 water jugs.

14 A. Yes, sir. I don't have any knowledge that I
15 have an institution out there that's not refilling water
16 jugs --

17 Q. Okay.

18 A. -- during the summer months.

19 Q. Okay. How often is ice supposed to be brought
20 out in the water jugs?

21 A. There's no policy and there's no specific
22 timeline on how often ice is supposed to be brought out.

23 Q. Okay. You -- did anybody from TDCJ provide any
24 instruction to officers at the Hutchins Unit or Warden
25 Pringle, for that matter, about how often ice needed to be

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1 documents showing that there's about 300 people on the
2 heat list at any given time, does that help you in any
3 way?

4 A. Help me as in to --

5 Q. Well, if there are 300 people on -- on -- at the
6 Hutchins Unit on the heat list, that means you're doing
7 welfare checks at 300 people every day every 30 minutes,
8 right?

9 A. Yes, sir.

10 Q. Okay. That means you can certainly do that,
11 right?

12 A. Yes, sir, we're doing that.

13 Q. Okay. Well, why couldn't you do 348 or 400, for
14 that matter, for an extra week?

15 A. I don't -- we're checking on the offenders that
16 have heat restrictions. We're doing that now. We're
17 checking on those guys now.

18 Q. You're checking on them once the doctors do the
19 intake physical and place the heat restriction on them,
20 right?

21 A. Yes.

22 Q. Okay. That means that in order for you to start
23 checking on them and performing these welfare checks, they
24 have to first have that intake physical, correct?

25 A. Yes.

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1 Q. Okay. That means that there is a window of time
2 in which there appears to me to be a hole in the system.
3 It could be three, four, five, six, seven days, however
4 long it takes to get that intake physical. My question to
5 you is: In order to fix that hole and potentially protect
6 inmates who are susceptible to heat, extreme heat, from
7 potential death, couldn't you place everyone that comes in
8 on the bus on a heat restriction list and perform those
9 check welfare situations until they've had that intake
10 physical with the P.A.?

11 MR. GARCIA: Objection: Compound; vague;
12 incomplete hypothetical; speculation. Answer as best you
13 can.

14 THE WITNESS: That would be something that
15 we would have to -- it would be different on every intake
16 facility. That would be something that we'd have to look
17 at and consider, say, "Hey, you know, can we do this based
18 on the number of staff that we have, the activities that
19 are going on on the particular facility?" That would be
20 something we'd just have to research.

21 Q. (By MR. EDWARDS) Okay.

22 A. I can't sit here and answer, yes, definite we
23 could do that.

24 Q. Has anybody thought to begin that process and
25 start to research that?

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March 26, 2013

1 A. As far as my knowledge, that hasn't been
2 researched. I haven't talked about that.

3 Q. Is there anything that you can think of that
4 would prevent you from researching that and determining
5 whether or not that's a possible solution?

6 A. No, there's nothing that would prevent the
7 research, no, sir.

8 Q. Do you believe that in the next, I don't know,
9 couple of months that will be researched?

10 A. That's something I can discuss with my CID
11 leadership.

12 Q. Okay. And, again, if there's something like
13 that to be implemented, at least at the Hutchins Unit,
14 that would be a decision that would be made by you,
15 Mr. Stephens, Mr. Thaler?

16 A. Well, if -- if it was determined that we could
17 -- that we could make this happen and we were going to do
18 this, it wouldn't just be implemented at Hutchins. It
19 would be implemented on other facilities across the board
20 because, you know, we're responsible for mitigating heat
21 all over the system, not just at -- not just at the
22 Hutchins facility.

23 Q. Sure. Are the other prisons that you operate --
24 they're not transfer facilities, are they? Operate.
25 Oversee those 11 prisons. Are those transfer --

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1 from UTMB? If you don't know, I understand.

2 A. I don't know, sir.

3 Q. Okay. With regard to housing assignments, do
4 you know if Mr. McCollum was placed on any sort of
5 restriction?

6 A. Are you talking about a housing restriction?

7 Q. Yeah, like a bed restriction.

8 A. I reviewed -- as part of the admin review,
9 getting ready for the deposition, I reviewed the HSM 18,
10 and I don't recall seeing any housing restrictions.

11 Q. Should he have -- that means -- he was placed on
12 a -- do you understand that he was placed in a top bunk?

13 A. Yes, sir, I understand that.

14 Q. And assume that he's five ten, 300 plus pounds.
15 Should he have been placed on a top bunk?

16 A. I don't make that decision. That's -- that's
17 the doctor's decision, whoever evaluates the offender,
18 because there's specific restrictions for lower and --
19 lower bunk only, lower level only.

20 Q. Let me ask you about that because he gets off
21 the bus, a nurse does some sort of basic triage and then
22 he gets into the facility, right? He hasn't seen the P.A.
23 or the doctor, right?

24 A. Yes, sir.

25 Q. Okay. So is it the -- the nurse that does that

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Robert Eason
March 26, 2013

1 initial triage, to your understanding, is supposed to do
2 bunk restrictions?

3 A. No.

4 Q. Who does bunk restrictions?

5 A. That's -- that's a housing restriction just like
6 a work restriction. The doctor would do that or P.A.

7 Q. Okay. So that would be part of that initial
8 intake physical?

9 A. Yes, sir.

10 Q. Okay. So just like the -- well, so there's --
11 it appears to be then there would be a window of time when
12 someone might be improperly placed in a top bunk when they
13 should have a lower bunk restriction; is that fair?

14 A. I don't know that to be accurate. Like I said,
15 I don't know which particular inmates we're talking about.

16 Q. Larry McCollum.

17 A. Okay.

18 Q. Larry McCollum shouldn't have been placed on a
19 top bunk, right?

20 MR. GARCIA: Objection: Speculation.

21 THE WITNESS: I don't know that, sir. I'm
22 not a medical professional. I didn't evaluate him.

23 Q. (By MR. EDWARDS) Today, if Larry McCollum went to
24 the Hutchins Unit, are policies in place to make sure that
25 a person of his size and stature would not be placed on

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March 26, 2013

1 A. Without looking at the documents, I can't --

2 Q. Okay.

3 A. -- I'm not that familiar with it.

4 Q. What about Charles Cook on August 8th, 2011, at
5 the Hodge Unit dying with a body temperature of 107.9
6 degrees?

7 A. My testimony will be the same on that one as
8 well.

9 Q. Not familiar with that?

10 A. I know we have offender deaths, but without
11 looking at the documents, I wouldn't be familiar with all
12 the --

13 Q. Okay.

14 A. -- the reports and if it was deemed
15 hyperthermia.

16 Q. Okay. The Michael Unit, that's a unit that's
17 under your control?

18 A. Yes, sir.

19 Q. Okay. Are you familiar with the death of
20 Alexander Togonidze, who died on August 8th, 2011, with a
21 body temperature above 106 degrees?

22 A. My testimony would be the same: Without looking
23 at the documents --

24 Q. Okay.

25 A. -- and researching it where I could talk about

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March 26, 2013

1 it, yes, sir.

2 MR. EDWARDS: Do you mind going off the
3 record for one second, Bruce? And then we're probably
4 done.

5 MR. GARCIA: Off the record 6:36.

6 (Discussion off the record).

7 (Exhibits Nos. 45-46 marked).

8 THE VIDEOGRAPHER: We're back on the record
9 at 6:38.

10 Q. (By MR. EDWARDS) Okay. We just have a very, very
11 brief time, but we mentioned Kenneth James at the Gurney
12 Unit who died on August 13th, 2011. Let me show you an
13 autopsy, sir. With regard to Mr. James, who died at the
14 Gurney Unit, I've highlighted what I believe to be the
15 cause of death in that case. Would you read that for the
16 jury, sir?

17 A. Just the highlighted area?

18 Q. Just the highlighted area, yes.

19 A. "Cause of death is most likely environmental
20 hyperthermia-related to classic heat stroke."

21 Q. Okay. Now, assuming that -- that Mr. James was
22 housed at the Gurney Unit and died from classic heat
23 stroke, that would be heat-related illness which should be
24 brought to your attention and an administrative review
25 should be done, right?

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Plaintiffs' MSJ Appx. 6593

Stephen McCollum, et al v.
Brad Livingston, et al.

Robert Eason
March 26, 2013

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4 STEPHEN MCCOLLUM, STEPHANIE)
5 KINGREY, and SANDRA McCOLLUM,)
6 individually and as heirs at)
7 law to the Estate of LARRY GENE)
8 McCOLLUM,)
9 Plaintiffs,)
10)
11 vs.) CIVIL ACTION NO.
12) 3:12-CV-02037
13 BRAD LIVINGSTON, JEFF PRINGLE,)
14 AND THE TEXAS DEPARTMENT OF)
15 CRIMINAL JUSTICE,)
16 Defendants.)

17 REPORTER'S CERTIFICATE FOR THE
18 ORAL RULE 30(B)(6) DEPOSITION OF TEXAS DEPARTMENT OF
19 CRIMINAL JUSTICE (ROBERT EASON)

20 MARCH 26, 2013

21 I, Kathleen Nevils, a Certified Shorthand Reporter
22 in and for the State of Texas, do hereby certify that the
23 foregoing deposition is a full, true and correct
24 transcript;

25 That the foregoing deposition of TEXAS DEPARTMENT
OF CRIMINAL JUSTICE (ROBERT EASON) was taken by me in
stenograph on March 26, 2013, the said witness having been
by me first duly cautioned and sworn to tell the truth,
the whole truth and nothing but the truth, and the same
was thereafter reduced to typewriting by me or under my
direction. The charge for the completed deposition is
\$_____ due from Plaintiffs;

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Plaintiffs' MSJ Appx. 6594

Stephen McCollum, et al v.
Brad Livingston, et al.

Robert Eason
March 26, 2013

1 That the amount of time used by each party at the
2 deposition is as follows:

3 Jeff Edwards - (05:58)

4 I further certify that I am neither counsel for,
5 related to, nor employed by any of the parties in the
6 action in which this proceeding was taken, and further
7 that I am not financially or otherwise interested in the
8 outcome of the action.

9 I further certify that before the completion of the
10 deposition, the Deponent and/or the Plaintiff/Defendant
11 did request to review the transcript.

12 WITNESS MY HAND, this the 10th day of April, 2013.

13
14
15

Kathleen Nevils
Certified Shorthand Reporter in
and for the State of Texas
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
McCOLLUM, individually, and STEPHANIE §
KINGREY, individually and as independent §
administrator of the Estate of LARRY GENE §
McCOLLUM, §
PLAINTIFFS §
§
v. § CIVIL ACTION NO.
§ 4:14-cv-3253
§ JURY DEMAND
BRAD LIVINGSTON, JEFF PRINGLE, §
RICHARD CLARK, KAREN TATE, §
SANDREA SANDERS, ROBERT EASON, the §
UNIVERSITY OF TEXAS MEDICAL §
BRANCH and the TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE. §
DEFENDANTS §

Plaintiffs' Consolidated Summary Judgment Response Appendix

EXHIBIT 279

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 STEPHEN McCOLLUM and §
5 SANDRA McCOLLUM, §
6 individually and as §
7 independent administrator §
8 of the Estate of LARRY § Civil Action
9 GENE McCOLLUM, §
10 § Number 4:14-CV-3253

11 § Plaintiffs, §
12 § §
13 § §
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25 § §

1 BRAD LIVINGSTON, JEFF §
2 PRINGLE, RICHARD CLARK, §
3 KAREN TATE, SANDREA §
4 SANDERS, ROBERT EASON, §
5 THE UNIVERSITY OF TEXAS §
6 MEDICAL BRANCH and THE §
7 TEXAS DEPARTMENT OF §
8 CRIMINAL JUSTICE, §
9 § §
10 § §
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1 Defendants. §

2 -----
3 ORAL AND VIDEOTAPED DEPOSITION OF
4 GARY EUBANK

5 MAY 6, 2016

1 ORAL AND VIDEOTAPED DEPOSITION OF GARY
2 EUBANK, produced as a witness at the instance of the
3 PLAINTIFFS, and duly sworn, was taken in the
4 above-styled and numbered cause on MAY 6, 2016, from
5 8:37 a.m. to 5:20 p.m., before Melody Reneé
6 Campbell, CSR in and for the State of Texas,
7 reported by method of machine shorthand, at the
8 offices of the Attorney General, 300 West 15th
9 Street, Austin, Texas, pursuant to Notice and Court
10 Order and the Federal Rules of Civil Procedure.

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3 Ms. Deborah M. Woltersdorf
4 Ms. Shanna Molanre
5 Ms. Ashley Palermo
6 Ms. Jennifer Osteen
7 Ms. Ashley Palermo
8 Mr. Derek Kammerlocher
9 Ms. Amanda Kates
10 Ms. Jennifer Daniel
11 Mr. Kevin J. Schaefer (Videographer)

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1 the protocol book, and the book then gives the nurse
2 the guidance and the direction as to how to proceed,
3 depending upon the information that the nurse
4 receives from the officer.

5 Q. You're a nurse. Right?

6 A. I am.

7 Q. You've been a nurse for a long time.
8 Right?

9 A. Very long time.

10 Q. Registered nurse?

11 A. Yeah.

12 Q. If you were told that someone was seizing
13 and nonresponsive for the better part of a half
14 hour, what would you do, sir?

15 MR. ALVAREZ: Again, calls for
16 speculation.

17 Q. (BY MR. EDWARDS) A hundred times out of a
18 hundred, what would you do, sir? Just those facts.

19 MR. BOYD: Objection. Incomplete
20 hypothetical.

21 A. And this is from a non -- I mean, I don't
22 see the patient. They're not in my presence. I'm
23 not assessing them. I've just received that
24 information.

25 Q. (BY MR. EDWARDS) Mr. Eubank, if I fell

1 over and was seizing and was nonresponsive and Graig
2 was kind enough to call you on the phone and say,
3 what should we do, what would you tell him to do?

4 A. Call 911.

5 MR. BOYD: Objection. Incomplete
6 hypothetical.

7 Q. (BY MR. EDWARDS) Okay. Now, is there
8 anything different about -- should a prisoner get at
9 least, and maybe more, care than I get if I keel
10 over in this deposition?

11 MR. BOYD: Objection; incomplete
12 hypothetical.

13 A. We provide a standard -- a standard care
14 that's equal to the free world.

15 Q. (BY MR. EDWARDS) Absolutely. And so just
16 because somebody is a prisoner and convulsing and
17 seizing in a dorm at a prison doesn't mean they
18 deserve any less care than if a member of the jury
19 were to suffer a seizure and be nonresponsive.
20 Right?

21 A. Correct.

22 Q. Okay. Now, if my son suffered a seizure
23 and I contacted any sort of medical provider, a
24 nurse, a doctor, anybody, and called, what should I
25 do, I would hope they would say, get that person to

1 a hospital right away. Right?

2 A. Yes, sir.

3 Q. Okay. That's what you would expect your
4 nurses to do, right, if they're competent?

5 A. Yes.

6 Q. Certainly that's what you would do if
7 personally called. Right?

8 A. Yes.

9 Q. Do you -- having reviewed the quality
10 review thing, do you know if that occurred with
11 regards to Mr. McCollum?

12 MR. BOYD: Objection; vague.

13 A. I recall -- I recall that he was sent out
14 911.

15 Q. (BY MR. EDWARDS) Yeah. And did you -- do
16 you recall reviewing like the Office of Inspector
17 General, I think it's called, OIG report?

18 A. No.

19 Q. All right. The OIG report made it -- or
20 there are many records that I've reviewed that make
21 it seem like Mr. McCollum was sent offsite to a
22 hospital and 911 was called immediately. Do you
23 recall reviewing records like that? If you don't,
24 that's fine.

25 A. I recall reviewing the quality review that

1 Part 2, the nurse fills out; and 3 and 4, again,
2 there's -- there's several documents that we deal
3 with during the intake process.

4 Q. Okay. What is -- and let's take the case
5 of Larry McCollum. Okay?

6 A. Yes.

7 Q. He came from a county jail in Waco and he
8 arrived at the Hutchins facility on July 15th, 2011.
9 Okay? You with me?

10 A. Okay.

11 Q. All right. What was supposed to happen
12 with regards to the interview that he received by
13 somebody from UTMB? What was UTMB's responsibility,
14 if anything, with Larry McCollum when he got off the
15 bus?

16 MR. BOYD: Objection; compound.

17 Q. (BY MR. EDWARDS) Let me ask it again.
18 What's your understanding of what UTMB is supposed
19 to do once Mr. McCollum gets off the bus, prior to
20 entering the prison?

21 A. We want to know if -- we ask those fellows
22 or ladies if they have any complaints. We need to
23 find out what medicine that you're on. And there is
24 a document that they get from County that we look
25 at.

9 Q. Okay. Do you know how long that's
10 supposed to take?

11 A. No, sir. I don't recall.

12 Q. Okay. It's not a full-fledged physical.
13 Right?

A. That nursing does?

15 Q. Yeah.

16 A. No, sir, it isn't.

17 Q. Okay.

18 A. The medical staff does the physical and
19 history.

20 (Exhibit Number 2 marked.)

21 Q. (BY MR. EDWARDS) Is this what you're
22 talking about, the CID intake interview?

A. This is a component.

24 Q. Okay. Did I forget two pages? Is that
25 also a component?

1 speculation.

2 A. I -- I'm not sure about the heat index.

3 Q. (BY MR. EDWARDS) How much training did
4 you get about preventing heat-related illness inside
5 the hospital system you worked at in Cincinnati?

6 A. We didn't really get any there.

7 Q. You didn't need it. Right?

8 A. Correct.

9 Q. Because you had air conditioning. Right?

10 A. Right.

11 Q. No need to train people about the dangers
12 of high temperatures if you're going to keep the
13 temperature at a safe level. Right?

14 A. Uh-huh.

15 Q. Okay. Now, to be fair to you-all at UTMB,
16 you have nothing to do with whether or not the
17 prison system chooses to air condition. Right?

18 A. That's correct.

19 Q. UTMB doesn't determine how to build a
20 prison. Right?

21 A. Yes, sir.

22 Q. UTMB doesn't get to make the call, hey,
23 TDCJ, what are you guys, insane, please install some
24 air conditioning? You don't get to do that, do you?

25 MR. BOYD: Objection.

1 Q. Okay. But what you've reviewed of the
2 records is, once you learn seizure, you've got to
3 get that person to a hospital. Right?

4 A. That's correct.

5 Q. Okay. So the UTMB admin review, do you
6 know why it was initiated? Was it just because
7 somebody died?

8 A. As I recall, Dr. Coglianese sent me an
9 e-mail and asked for the record to be reviewed.

10 Q. Do you know why it wasn't done until
11 September of 2011?

12 A. No, sir.

13 Q. Do you know who would know that?

14 A. I do recall that it got lost, the request.
15 And I do recall writing on it to Kirk or something
16 that I apologize for not keeping up with this.

17 Q. Okay. You -- you specifically recall
18 losing the request to --

19 A. Misplacing it.

20 Q. Okay. Do you recall receiving it before
21 it was misplaced?

22 A. No.

23 Q. How do you know that Dr. Coglianese
24 actually requested it?

25 A. I've seen it, the request.

1 Q. Okay. All right. So it should have been
2 done sooner. Correct?

3 A. Yes.

4 Q. It should have been done -- when should it
5 have been done? In July?

6 A. I think -- I think we -- we have, kind of
7 as a rule, that we try to respond within like 30
8 days of the requests.

9 Q. Do you know that or is that just something
10 you're thinking?

11 A. Yeah. I'm just -- I -- I don't know that
12 exactly.

13 Q. All right. Could you turn to the last
14 page, sir.

15 MR. ALVAREZ: Is this Exhibit 6?

16 MR. EDWARDS: Oh, I'm sorry. I
17 didn't put an exhibit sticker on that. Thank you,
18 Graig.

19 Q. (BY MR. EDWARDS) Dr. -- I'm sorry.

20 Mr. Eubank, would you mind just putting that
21 anywhere on that document? Thank you very much.

22 | (Exhibit Number 6 marked.)

Q. (BY MR. EDWARDS) Do you know if there was a policy directive requiring officers to contact the hub before 911 was called in the summer of 2011?

1 A. Could you repeat that again, please?

2 Q. Sure. Do you know if there was a policy
3 directive from UTMB or, frankly, from TDCJ or
4 anybody else, requiring correctional officers to
5 contact the hub before initiating a 911 call?

6 A. Sir, what I remember is, when the DMS
7 system was initiated, then there were directions
8 that were sent to -- TDCJ agreed upon that they sent
9 to their officers. And I can't -- I mean, that's a
10 long time ago. I cannot remember what those
11 instructions were.

12 But they sort of led the security
13 officer through how do you set somebody up for DMS
14 and so on and so forth. I mean, there were a set of
15 instructions, I do remember that.

16 Q. Okay. But the goal was always, from you
17 and Dr. Murray, to have a registered nurse available
18 via video or telephone?

19 A. That was the goal.

20 Q. Okay.

21 A. If a unit was closed, you understand.

22 Q. If a medical department was not open.
23 Right?

24 A. Yeah, right.

25 Q. Okay. And I assume you'd agree with me

1 but I want to make sure, that there are certain
2 conditions that, you know, you need to provide
3 training to the nursing staff and the correctional
4 officers that these are life-threatening conditions
5 that require 911 in order for them to do their jobs
6 well. Right?

7 A. For the nursing staff?

8 Q. Yeah.

9 A. I expect the nursing staff to know that,
10 yes, sir.

11 Q. Okay. And if you look at the last -- if
12 you look at the last page, beginning TDCJ 18085.

13 A. Yes, sir.

14 Q. Okay. It looks like there's an e-mail
15 from Monty Hudspeth to a host of people.

16 A. Yes.

17 Q. Do you see that?

18 A. Yes, I do.

19 Q. And at the very back it says, "The
20 following are life-threatening conditions that are
21 taught in our training academy"?

22 A. I see that.

23 Q. Okay. Now, is this a TDCJ training
24 academy or is this a UTMB training academy, or do
25 you know?

1 A. It's TDC.

2 Q. TDC. Okay. If you flip to the next
3 page --

4 A. The last one?

5 Q. Yes. Some of the life-threatening
6 conditions that were taught in the TDCJ training
7 academy were seizures. Is that correct?

8 A. I see that.

9 Q. And you agree with that. Right?

10 A. I do.

11 Q. You would expect your nurses to understand
12 that, as well, right, licensed vocational nurses and
13 registered nurses? Right?

14 A. Yes.

15 Q. Okay. Cool, pale, clammy skin with a
16 decreased level of consciousness, that's also a
17 life-threatening condition. Right?

18 A. Symptom, uh-huh.

19 Q. All right. For life-threatening
20 conditions, the only appropriate response is to
21 contact 911 and get the person to a hospital.
22 Right?

23 A. In the absence of a medical staff. We
24 could initiate -- we could initiate emergency
25 treatment if we're available --

1 Q. Of course.

2 A. -- and then still call 911.

3 Q. You could do both. That would be the
4 appropriate thing to do. Right?

5 A. Yeah.

6 Q. And in Mr. McCollum's case, had nursing
7 staff been on site, they could have come to
8 Mr. McCollum's dorm and brought ice packs and done
9 whatever they could to help Mr. McCollum, who was
10 undergoing a heatstroke? Had they been available,
11 they could have done that. Right?

12 A. They could have intervened.

13 Q. Now, you still would need a doctor, but
14 certainly even nursing staff can help with ice packs
15 and help get to a cool air-conditioned space.

16 Right?

17 A. Yes, sir.

18 Q. Okay. Now, altered mental status is also
19 a life-threatening condition. Right?

20 A. It's listed here, right.

21 Q. And you agree with that. Right?

22 A. After an assessment is done, yes.

23 Q. And altered mental status just means
24 nonresponsive, confused, things like that. Right?

25 A. Well, nonresponsive is different than

1 being, you know, kind of confused.

2 Q. What does altered mental status mean to
3 you and the nurses you train and supervise?

4 MR. ALVAREZ: Objection; calls for
5 speculation.

6 Q. (BY MR. EDWARDS) The question was, what
7 does altered mental status mean to you and what you
8 would assume the nurses you supervise?

9 A. Your mental status has become altered,
10 just like it says. So you are not behaving --
11 you're behaving in some suspicious manner and we --
12 it needs to be assessed to determine what's
13 motivating that.

14 Q. Okay. What is ICS?

15 A. It's like calling a code blue. I don't
16 really remember what ICS stands for, but I do know
17 that it's kind of like an overhead page that
18 security has that says there's an emergent
19 condition.

20 Q. Coming back to that, I just want to be
21 certain. There's nothing from UTMB which requires
22 it to be the decisionmaker as to whether 911 is
23 called, as opposed to a correctional officer, that
24 you're aware of. Is that correct?

25 A. Could you ask me that again?

1 nonresponsive, these nurses would have followed
2 protocol and gotten them to a cooler place and begun
3 ice packs immediately, right, and directed the
4 officers to call 911. Right?

5 MR. BOYD: Objection; calls for
6 speculation.

7 A. We have the triage protocols and so there
8 are -- there are directions to the nurse in the hub
9 facility based on the complaints that they have
10 received.

11 Q. (BY MR. EDWARDS) Okay. If Mr. McCollum
12 had been -- if this had been in effect when
13 Mr. McCollum seized and had his heatstroke, the hub
14 people wouldn't have just said call 911, they would
15 have told the officers, "Move the patient to a cool,
16 air-conditioned place." Right?

17 MR. BOYD: Objection; calls for
18 speculation.

19 A. I'm not sure. They need to call -- the
20 important thing is to get 911 and to get the patient
21 to the hospital. And I can't judge the
22 circumstances that the patient was in and -- I mean,
23 I don't know where the patient was and what security
24 was doing and all of that. But what the nurse was
25 instructed to do by the protocols were, you've got

1 to get the guy to a hospital emergent -- quickly.

2 Q. Right. But that's step one, right?

3 That's the most important step?

4 A. That's very important.

5 Q. Sure. And to not do that is off the
6 charts. But also to not do more while -- it takes a
7 few minutes for the ambulance to arrive. Right?
8 Right?

9 A. Sure.

10 Q. And you know that heatstroke is a
11 life-threatening medical emergency. Right?

12 A. Heatstroke is.

13 Q. Yeah. And that's what Mr. McCollum was
14 experiencing. You know that. Right?

15 A. No, sir, I don't.

16 Q. Okay. Well, if he was, then the order
17 here would have been, call 911 and move him to a
18 cool, air-conditioned place. Right?

19 MR. BOYD: Objection; it's vague and
20 it calls for speculation.

21 Q. (BY MR. EDWARDS) Take a look at -- would
22 you answer my question before I go to another one?

23 A. Yes, sir. The hub nurse, the nurse in the
24 hub is instructed to follow the telephone triage
25 protocols.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
McCOLLUM, individually, and STEPHANIE §
KINGREY, individually and as independent §
administrator of the Estate of LARRY GENE §
McCOLLUM, §
PLAINTIFFS §
§
v. § CIVIL ACTION NO.
§ 4:14-cv-3253
§ JURY DEMAND
BRAD LIVINGSTON, JEFF PRINGLE, §
RICHARD CLARK, KAREN TATE, §
SANDREA SANDERS, ROBERT EASON, the §
UNIVERSITY OF TEXAS MEDICAL §
BRANCH and the TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE. §
DEFENDANTS §

Plaintiffs' Consolidated Summary Judgment Response Appendix

EXHIBIT 280

ORAL DEPOSITION OF STEPHANIE KINGREY

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4
5 STEPHEN MCCOLLUM, et al,)
6 Plaintiffs,)
7 V.) C.A. No. 3:12-CV-02037
8 BRAD LIVINGSTON, et al,)
9 Defendants.)
10
11
12 *****
13
14
15 ORAL DEPOSITION OF
16 STEPHANIE KINGREY
17 November 22, 2013
18
19 *****
20
21
22
23
24
25

15 ORAL DEPOSITION OF STEPHANIE KINGREY, produced as a
16 witness at the instance of the Defendant University of
17 Texas Medical Branch and duly sworn, was taken in the
18 above-styled and numbered cause on the 22nd of
19 November, 2013, from 12:09 p.m. to 3:25 p.m., before
20 DEBRA L. McGREW, CSR in and for the State of Texas,
21 reported by machine shorthand at the offices of
22 Edwards Law, 1101 E. 11th Street, Austin, Texas,
23 pursuant to the Federal Rules of Civil Procedure.

ORAL DEPOSITION OF STEPHANIE KINGREY

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20 ALSO PRESENT:

21 Jennifer Osteen
22 Sandra Sue McCollum
Stephen Michael McCollum

24 *-*-*-*-*
25

ORAL DEPOSITION OF STEPHANIE KINGREY

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ORAL DEPOSITION OF STEPHANIE KINGREY

1 A. Not at that point, no.

2 Q. As far as you know, did he ever take any
3 medications for diabetes?

4 A. Not that I know of.

5 Q. Do you know -- are you aware of him ever being
6 diagnosed with diabetes?

7 A. He told me before he went in to Waco that he
8 was a diabetic.

9 Q. And was that a surprise to you?

10 A. No, because it runs in the family.

11 Q. Okay. And did you ask him whether he was
12 taking any medication for that?

13 A. No.

14 Q. Did you have any concerns about how he might
15 pay for medication for that diabetes?

16 A. My guess?

17 Q. Uh-huh.

18 A. Yeah.

19 Q. I'm sorry?

20 A. Yes.

21 Q. You --

22 A. I didn't know how he would pay for it if he had
23 to.

24 Q. Okay. And did you ever ask him, Hey, Dad,
25 you're not working, how are you paying for your diabetes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
McCOLLUM, individually, and STEPHANIE §
KINGREY, individually and as independent §
administrator of the Estate of LARRY GENE §
McCOLLUM, §
PLAINTIFFS §
§
v. § CIVIL ACTION NO.
§ 4:14-cv-3253
§ JURY DEMAND
BRAD LIVINGSTON, JEFF PRINGLE, §
RICHARD CLARK, KAREN TATE, §
SANDREA SANDERS, ROBERT EASON, the §
UNIVERSITY OF TEXAS MEDICAL §
BRANCH and the TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE. §
DEFENDANTS §

Plaintiffs' Consolidated Summary Judgment Response Appendix

EXHIBIT 281

Lannette Linthicum - 1/13/2016

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA) McCOLLUM, individually, and) STEPHANIE KINGREY,) individually and independent) administrator of the Estate) of LARRY GENE McCOLLUM) PLAINTIFFS)) CIVIL ACTION NO.) 4:14-cv-3253 v.) JURY DEMAND)))) LANNETTE LINTHICUM, JEFF) PRINGLE, RICHARD CLARK,) KAREN TATE, SANDREA SANDERS,) ROBERT FASON, the UNIVERSITY) OF TEXAS MEDICAL BRANCH and) the TEXAS DEPARTMENT OF) CRIMINAL JUSTICE) DEFENDANTS)) _____ KEITH COLE, JACKIE BRANNUM,) RICHARD KING, DEAN ANTHONY) MOJICA, RAY WILSON, FRED) WALLACE, and MARVIN RAY) YATES, individually and on) behalf of those similarly) situated,)) CIVIL ACTION NO. Plaintiffs,) 4:14-cv-1698)) v.))) LANNETTE LINTHICUM, in his) official capacity, ROBERTO) HERRERA, in his official) capacity, and TEXAS) DEPARTMENT OF CRIMINAL) JUSTICE,) Defendants.)

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

Plaintiffs' MSJ Appx. 6624

Lannette Linthicum - 1/13/2016

* * * * *

REPORTER'S CERTIFICATION
DEPOSITION OF LANNETTE LINTHICUM
January 13, 2016
VOLUME 1

* * * * *

ORAL AND VIDEOTAPED DEPOSITION OF LANNETTE

LINTHICUM, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 13th day of January, 2016, from 9:18 a.m. to 3:59 p.m., before Abigail Guerra, CSR, in and for the State of Texas, reported by machine shorthand, before Honorable Keith Ellison, at the United States District Courthouse, 515 Rusk, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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Plaintiffs' MSJ Appx. 6625

Lannette Linthicum - 1/13/2016

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Lannette Linthicum - 1/13/2016

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15 Ms. Kamilla L. Stokes
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Ms. Brian M. Sears
16 Mr. Daniel C. Neuhoff
Ms. Heather Rhea
17 Ms. Lori K. Erwin
Ms. Glenda Adams
18 Ms. Ariel Wiley
Mr. Phillip Boyd
19 Mr. Derek Kammerlacher
Dr. Owen Murray
20 Judge Keith P. Ellison
Ms. Rebbecca Vogel

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23
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Plaintiffs' MSJ Appx. 6627

Lannette Linthicum - 1/13/2016

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Plaintiffs' MSJ Appx. 6628

Lannette Linthicum - 1/13/2016

1 A. The construction of the medical units were
2 constructed -- all of those units that I just named for you,
3 were constructed as part of the Ruiz healthcare reforms under
4 Judge Justice. All of those facilities were built under the
5 Ruiz lawsuit. The design and architecture and whether or not
6 air-conditioning went in preceded my tenure as medical
7 director.

8 Q. So you don't know why the places you choose to place
9 long-term people with healthcare needs, why those are
10 air-conditioned?

11 THE COURT: Okay. I think we've already covered
12 this. Why don't we move on?

13 MR. EDWARDS: All right.

14 THE COURT: I think the doctor has not done an
15 inquiry as to what other places around the state are
16 air-conditioned. Is that fair?

17 THE WITNESS: Yes, Your Honor.

18 Q. (BY MR. EDWARDS) Who makes the criteria as to what
19 HSM -- well -- strike that.

20 Do you know what an HSM-18 form is?

21 A. Yes.

22 Q. What is it?

23 A. It's the Health Summary for Medical Classification.

24 Q. What does that mean?

25 A. It's a medical form that's completed by the unit

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Plaintiffs' MSJ Appx. 6629

Lannette Linthicum - 1/13/2016

1 medical staff, and it's a form that's used by the Corrections
2 Institution Division, specifically their classification and
3 records department, to make decisions about unit of assignments
4 for offenders and work assignments and other restrictions.

5 Q. Do you have any input into criteria that go on the
6 HSM-18?

7 A. There is a joint committee called the Joint Policy
8 and Procedure Committee which consists of representatives from
9 the three partner agencies, UTMB, Texas Tech, and TDCJ Health
10 Services staff. They work together collaboratively, and they
11 review all of the Correctional Managed Healthcare policies and
12 make decisions about those forms and whether any changes that's
13 necessary to those forms.

14 Q. So, yes, you do have a role in the criteria of
15 HSM-18?

16 A. I don't have a direct role. The committee does the
17 work. After the committee does its work, that work is
18 forwarded on to the university medical directors.

19 Q. You're on the committee, right?

20 A. No, I'm not.

21 Q. Who's on the committee?

22 A. I appoint people on committee out of the Health
23 Services Division.

24 Q. You could appoint yourself if you wanted to?

25 A. No. The medical directors don't serve on the joint

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Plaintiffs' MSJ Appx. 6630

Lannette Linthicum - 1/13/2016

1 Q. Did you have a safe operating prison system in 2011?

2 A. Yes.

3 Q. Even for the men who died from heatstroke in 2011?

4 Do you believe your prison system was safe for them?

5 A. Yes. It was very unfortunate that those 11 offenders
6 lost their lives, but you can't use that to say the entire
7 system is unsafe. There were far for offender that died from
8 cardiovascular disease and cancer and liver disease than the 11
9 that succumbed to heat.

10 Q. Okay. When someone responds to you with the
11 following words: "So what?" What do you mean by that? What
12 is the significance to you that more people died from heart
13 attacks or cancer than heatstroke in 2011? What is it that you
14 as a policy making person draw from that?

15 A. What I'm saying is that you're implying that those
16 offenders who died from heatstroke, that in some way they
17 counted more than the other offenders that died from all the
18 other diseases.

19 THE COURT: Hold on. I don't think that's his
20 import. I think what he's asking indirectly, isn't it easier
21 to deal the problems caused by intensive heat than it is to
22 deal with the problems caused by cancer or heart disease?

23 Is that right?

24 MR. EDWARDS: Yes.

25 THE COURT: So that's the question. The fact

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Plaintiffs' MSJ Appx. 6631

Lannette Linthicum - 1/13/2016

1 that there are heart disease deaths and cancer deaths is
2 tragic. Every life is precious.

3 THE WITNESS: Yes.

4 THE COURT: But isn't there fix at hand for
5 heat-related deaths that's not available for other kinds of
6 deaths?

7 THE WITNESS: Yes, it is, Your Honor. For those
8 offenders that we feel are the greatest risk, we bring into our
9 impatient areas, those 738 infirmary beds. Probably 70 percent
10 of those beds are filled with offenders who are permanently
11 assigned to those beds because of coexisting comorbidities,
12 that we feel they cannot survive in general population. It's
13 unsafe. Some of them are on oxygen. Some of them have what we
14 call "multiorgan system disease." They may have asthma. They
15 may have cardiovascular disease. They may have --

16 THE REPORTER: Slow down, please.

17 THE WITNESS: Sorry.

18 THE COURT: I think I understand now.

19 THE WITNESS: They may have, you know, disease
20 in multiple systems.

21 THE COURT: But the existence of these other
22 diseases doesn't really bear on the question of how we deal
23 with people who have heat sensitivity, does it?

24 THE WITNESS: It does because some of these
25 other diseases make people more susceptible to heat illnesses.

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1 A. One is classic. Is that what you're --

2 Q. Do you know the medical conditions that people are
3 suffering from which impair the body's ability to
4 thermoregulate or render them more susceptible to heatstroke?
5 For instance, is diabetes one of those conditions?

6 A. Diabetes is a condition that may cause a person to be
7 susceptible to a heat-related illness. I would not go as far
8 as to say that if you're diabetic, you're going to
9 automatically develop a heatstroke because you're diabetic.

10 Q. Okay. What about COPD?

11 A. What about it?

12 Q. Is that something that causes one or can cause one to
13 have their body impaired and lead to a heatstroke?

14 A. Well, again, it gets back to-- not a heatstroke, but
15 maybe a heat-related illness. They may be more predisposed to
16 heat-related exhaustion, and primarily a lot of these diseases
17 is because of the medications that they are taking for
18 treatment of disorders, not because of the disorder itself.

19 Q. What about cardiovascular disease?

20 A. Cardiovascular disease -- again, you may have a
21 predisposition to a heat-related illness because of systemic
22 issues with your -- with your ability to respond metabolically
23 to increased demands related to heat and activity and exertion.

24 Q. What about morbid obesity?

25 A. Morbid obesity in and of itself can cause certain

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1 individuals to have issues with heat output.

2 Q. What about hypertension?

3 A. Hypertension is more of the medications that are used
4 to treat hypertension, primarily a diuretic, thiazide. All of
5 this is potential.

6 Q. Sure.

7 A. Mr. Edwards, we've got 30,000 hypertensive patients.
8 They're not all having heat-related illnesses. We've got 9,000
9 diabetics statewide. They're not all having heat-related
10 illnesses.

11 Q. Well, and what troubles me, Doctor, is the conclusion
12 you seem to be advocating is because we have 9,000 diabetics
13 and only a few of them suffer heatstroke, that we're -- that
14 you're doing an okay job.

15 A. Well, we are doing an okay job. I think we're doing
16 better than an okay job. These university medical schools are
17 providing outstanding care to the offender population, and we
18 are very lucky to have them providing care within our
19 facilities. And we monitor. We have dashboards where we
20 monitor ourselves and benchmark ourselves against large HMO
21 corporations in terms of management of these chronic illnesses,
22 and we're doing better than most of them.

23 Q. It's your position that the healthcare you provide
24 for chronic healthcare conditions, that you're doing better
25 than the private sector?

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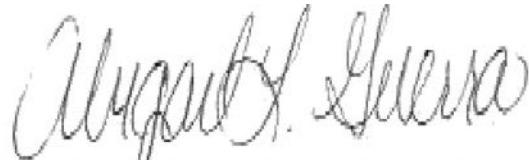
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I further certify that I am neither attorney, nor
counsel for, nor related to, nor employed by any of the parties
or attorneys to the action in which this deposition was taken;

Further, I am not a relative, nor an employee of any
attorney of record in this cause, nor am I financially or
otherwise interested in the outcome of the action.

Certified to by me this 28th day of January, 2016.



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